

Applicant Details

First Name **Trevor**
 Middle Initial **J**
 Last Name **Rhodes**
 Citizenship Status **U. S. Citizen**
 Email Address trevorrhodes3@gmail.com
 Address

Address
Street
2106 10th St NW
City
Washington
State/Territory
District of Columbia
Zip
20001
Country
United States

Contact Phone Number **6014972779**

Applicant Education

BA/BS From **Mississippi State University**
 Date of BA/BS **December 2018**
 JD/LLB From **Georgetown University Law Center**
https://www.nalplawschools.org/employer_profile?FormID=961
 Date of JD/LLB **May 15, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **The Georgetown Law Journal**
 Moot Court Experience **No**

Bar Admission

Admission(s) **District of Columbia**

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Siegel, Jennifer
Jennifer.L.Siegel@medstar.net
410-772-6798

Micallef, Joseph
jmicallef@sidley.com
2027368492

Sirota, Rima
rs367@law.georgetown.edu
(202) 353-7531

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Trevor Rhodes
2106 10th St NW Apt 4
Washington, D.C. 20001

April 8, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
600 Granby St,
Norfolk, VA 23510

Dear Judge Walker:

I am the Health Law Fellow at MedStar Health and alumnus of Georgetown University Law Center and *The Georgetown Law Journal*. I am writing to apply for a 2024-2025 clerkship in your chambers.

I would like to clerk in Norfolk because I want to build my career in the DMV area and because I am interested in patent law. I have enjoyed living in D.C., and I want to work near this area for the long term. I also enjoy studying patent law, and the Eastern District of Virginia provides a terrific opportunity to pursue that interest.

More specifically, I want to clerk for you, Judge Walker, because I want to follow a career path similar to yours. I am eagerly pursuing a career as a federal prosecutor, hoping to focus on healthcare fraud. I believe that our shared interests and career goals would create a fruitful and enjoyable working environment.

Enclosed please find a copy of my resume, my law school transcript, and my writing sample. Letters of recommendation from Professor Rima Sirota (202-662-9841), Professor Joseph Micallef (202-736-8492) and a senior attorney at MedStar Health, Jennifer Siegel (301-351-5912) are attached.

If you have any questions, please feel free to contact me at trevorrhodes3@gmail.com or (601-497-2779). Thank you very much for considering my application.

Respectfully,

Trevor Rhodes

Trevor Rhodes

2106 10th St NW Apt 4 Washington, D.C. 20001 | Trevorrhodes3@gmail.com | (601) 497-2779

EDUCATION

Georgetown University Law Center

Washington, D.C.

Juris Doctor

May 2022

GPA: 3.61

Journal: *The Georgetown Law Journal*, Executive Editor for the *Annual Review of Criminal Procedure*

Activities: Health Law Society, *Treasurer*; World Health Organization Negotiation Simulation;

Student Intellectual Property Law Association; COVID-19 Task Force

Mississippi State University

Starkville, MS

Bachelor of Science in Biomedical Engineering, Minor in Pre-Law

December 2018

Honors: President's Scholar; Dean's Scholar

Senior Project: Designed and constructed titanium screw used in canine neurosurgery

EXPERIENCE

MedStar Health

Columbia, MD

Health Law Fellow, Office of the General Counsel

September 2022-Present

- Supported Telehealth Institute by analyzing and ensuring compliance with state and federal laws and regulations regarding: patient consent for asynchronous services and for remote patient monitoring; scope of medical services that may be delivered via telehealth; and accessibility of telehealth services
- Analyzed medical-service partnership agreements, medical-legal partnerships, and public grant-funded programs for compliance with AKS, Beneficiary Inducement CMP, and Stark law
- Supporting subsidiaries by drafting, revising, and negotiating vendor contracts, master service agreements, stock purchase agreement, and data security exhibits
- Participating and coordinating with outside law firm in response to attorney general investigation: gathered documents; analyzing documents for responsiveness or privilege; participating in internal interviews

Civil Litigation Clinic, Georgetown University Law Center

Washington, D.C.

Student Advocate

Spring 2022

- Represented mother and disabled child before the Department of Education's Office for Civil Rights (OCR)
- Constructed case theory permitting OCR to enforce Section 504 against a private after-school care program
- Drafted complaint, cogently intertwining pertinent law with advantageous facts

U.S. Department of Justice

Washington, D.C.

Legal Intern, Civil Division, Fraud Section

Fall 2021

- Researched novel legal theory interpreting the False Claims Act to establish "preponderance of evidence" standard for violations of criminal fraud law
- Drafted memo analyzing whether a fraudulent inducement claim can be based on fraudulent estimates

U.S. Department of Health and Human Services

Washington, D.C.

Legal Intern, Office of Global Affairs, Trade and Health Office

Summer 2021

- Analyzed World Trade Organization proposals affecting IP of COVID vaccine technology
- Drafted report identifying legal mechanisms countries may adopt to obtain private companies' trade secrets

U.S. Attorney's Office for the District of Columbia

Washington, D.C.

Legal Intern, Violent Crimes and Narcotics Trafficking Section

Spring 2021

- Singlehandedly analyzed fact pattern then drafted motion opposing a defendant's motion to suppress

U.S. Department of Health and Human Services

Washington, D.C.

Legal Intern, Office of the National Coordinator (ONC)

Summer 2020

- Researched and analyzed state legislation and administrative rules affecting "information blocking"

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Trevor James Rhodes
GUID: 824826524

Course Level: Juris Doctor

Degrees Awarded:
Juris Doctor Jun 08, 2022
Georgetown University Law Center
Major: Law

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2019							
LAWJ	001	94	Civil Procedure	4.00	B+	13.32	
			Kevin Arlyck				
LAWJ	002	41	Contracts	4.00	B	12.00	
			Gregory Klass				
LAWJ	004	94	Constitutional Law I: The Federal System	3.00	B+	9.99	
			Laura Donohue				
LAWJ	005	42	Legal Practice: Writing and Analysis	2.00	IP	0.00	
			Rima Sirota				
			EHrs QHrs QPts GPA				
Current			11.00 11.00 35.31 3.21				
Cumulative			11.00 11.00 35.31 3.21				
Spring 2020							
LAWJ	003	42	Criminal Justice	4.00	P	0.00	
			Rosa Brooks				
LAWJ	005	42	Legal Practice: Writing and Analysis	4.00	P	0.00	
			Rima Sirota				
LAWJ	007	94	Property	4.00	P	0.00	
			Sheila Foster				
LAWJ	008	94	Torts	4.00	P	0.00	
			Gary Peller				
LAWJ	1603	50	How to Regulate	3.00	P	0.00	
			David Hyman				
LAWJ	611	06	World Health Assembly Simulation: Negotiation Regarding Climate Change Impacts on Health	1.00	P	0.00	
			Vicki Arroyo				
Mandatory P/F for Spring 2020 due to COVID19							
			EHrs QHrs QPts GPA				
Current			20.00 0.00 0.00 0.00				
Annual			31.00 11.00 35.31 3.21				
Cumulative			31.00 11.00 35.31 3.21				
Fall 2020							
LAWJ	1625	05	Technology Policy and Practice	2.00	B+	6.66	
			Hillary Brill				
LAWJ	206	08	Health Law and Policy	4.00	A	16.00	
			Gregg Bloche				
LAWJ	317	08	Negotiations Seminar	3.00	A-	11.01	
			Stephen Altman				
LAWJ	332	07	Patent Law	3.00	A	12.00	
			Joseph Micallef				
			EHrs QHrs QPts GPA				
Current			12.00 12.00 45.67 3.81				
Cumulative			43.00 23.00 80.98 3.52				

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Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	1028	08	Health Care Fraud and Abuse Seminar	2.00	A-	7.34	
			Joshua Levy				
LAWJ	121	09	Corporations	4.00	A	16.00	
			Urska Velikonja				
LAWJ	1491	05	Externship I Seminar (J.D. Externship Program)		NG		
			John Thorlin				
LAWJ	1491	80	~Seminar	1.00	P	0.00	
			John Thorlin				
LAWJ	1491	82	~Fieldwork 3cr	3.00	P	0.00	
			John Thorlin				
LAWJ	215	09	Constitutional Law II: Individual Rights and Liberties	4.00	A-	14.68	
			Robin Lenhardt				
			EHrs QHrs QPts GPA				
Current			14.00 10.00 38.02 3.80				
Annual			26.00 22.00 83.69 3.80				
Cumulative			57.00 33.00 119.00 3.61				
Fall 2021							
LAWJ	1492	07	Externship II Seminar (J.D. Externship Program)		NG		
			Rachit Choksi				
LAWJ	1492	122	~Seminar	1.00	B+	3.33	
			Rachit Choksi				
LAWJ	1492	124	~Fieldwork 3cr	3.00	P	0.00	
			Rachit Choksi				
LAWJ	165	05	Evidence	4.00	A	16.00	
			Michael Gottesman				
LAWJ	178	07	Federal Courts and the Federal System	3.00	P	0.00	
			Michael Raab				
LAWJ	2037	12	Health Information Technology and the Law	2.00	A-	7.34	
			Jennifer Geetter				
LAWJ	3038	08	Biosecurity and the Law	2.00	B+	6.66	
			Jared Silberman				
			EHrs QHrs QPts GPA				
Current			15.00 9.00 33.33 3.70				
Cumulative			72.00 42.00 152.33 3.63				
Spring 2022							
LAWJ	025	05	Administrative Law	3.00	A-	11.01	
			Anita Krishnakumar				
LAWJ	044	05	Appellate Practice Seminar	3.00	B+	9.99	
			Erin Murphy				
LAWJ	1494	05	Civil Litigation Clinic	6.00	A-	22.02	
			Stephanie Glaberson				
LAWJ	361	03	Professional Responsibility	2.00	B+	6.66	
			Michael Rosenthal				

-----Continued on Next Page-----

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Trevor James Rhodes
GUID: 824826524

----- Transcript Totals -----				
	EHrs	QHrs	QPts	GPA
Current	14.00	14.00	49.68	3.55
Annual	29.00	23.00	83.01	3.61
Cumulative	86.00	56.00	202.01	3.61
----- End of Juris Doctor Record -----				

Unofficial

April 9, 2023

The Honorable Jamar Walker
U.S. District Court for the Eastern District of Virginia
600 Granby St Ste 193A, Norfolk, VA 23510

Dear Judge Walker:

I am writing to highly recommend Trevor for this clerkship. Trevor worked with me in a legal capacity during the last year at Medstar Health, and during that time, he demonstrated exceptional skills and qualities that make him an excellent candidate for this position.

Trevor's legal research and writing skills are truly outstanding. In every project he undertakes, he takes the time to fully understand the complex issues at hand, and he conducts very thorough research. His legal writing is clear, concise, and well-organized, and he always presents his arguments in a logical and compelling manner. Trevor's research and writing skills enabled us to better assist our clients with the ever-changing regulatory landscape during the public health emergency. When working on contractual agreements, he asked thoughtful questions of our clients and drafted provisions to further their goals. He is a quick study and provided helpful research memorandums on a myriad of legal topics. I have no doubt that his skillset will be valuable to any employer lucky enough to have him on board.

What sets Trevor apart, however, is not just his technical legal skills, but also his exceptional personal qualities. Trevor is a pleasure to work with, and his easygoing and personable nature made him an integral part of our team. He is a great listener and a thoughtful collaborator, always willing to consider other viewpoints and work collaboratively with his colleagues. His positive attitude and sense of humor helped to lighten the mood during stressful times, and his dedication to his work was always evident.

Trevor's exemplary work has been invaluable to supporting MedStar's telehealth efforts. Telehealth services expanded during the public health emergency and will continue to be an important modality for rendering care after the public health emergency ends. Trevor spent countless hours researching relevant regulations, statutes, and state guidance documents to provide us with detailed memos that have shaped MedStar's strategy. He was able to explain complex legal concepts in a clear and concise manner to our clients.

In addition to his legal work, Trevor also made significant contributions to our team in other ways. He was always willing to take on additional responsibilities, and he often volunteered to help our colleagues with their assignments. He was also an active participant in team meetings and discussions, and he was always willing to share his insights and ideas. His positive attitude and enthusiasm were contagious, and they helped to create a positive and productive work environment.

In conclusion, I cannot recommend Trevor highly enough for this position. His legal research and writing skills are truly exceptional, and his personal qualities make him a pleasure to work with. He is a dedicated and hard-working individual who is committed to achieving the best possible outcomes for his clients. I have no doubt that he will be an asset to any employer that has the good fortune to work with him.

Please do not hesitate to contact me if you require any further information or if you have any questions about Trevor's work with our team at Medstar Health.

With Kind Regards,

Jennifer Siegel
Hospital Counsel

MedStar Health, Inc.
MedStar Good Samaritan Hospital
MedStar Union Memorial Hospital

Jennifer Siegel - Jennifer.L.Siegel@medstar.net - 410-772-6798

SIDLEY

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JMICALLEF@SIDLEY.COM

May 19, 2021

Re: Clerkship Recommendation for Trevor Rhodes

To Whom it May Concern:

I write to support Trevor Rhodes's application to serve as a law clerk.

Trevor was a student in my patent law class at Georgetown Law Center in the fall of 2020. That was, of course, in the midst of the pandemic, so classes were held only remotely. Yet, Trevor stood out as one of the more engaged and interested students in the class.

Trevor's performance in my patent law class ranks among the top few students of the past three years. He appears to have an inquisitive mind, a dedicated work ethic, and significant legal talent. I believe Trevor will do well as a law clerk. For example, in my class, each student is required to be "on call" for at least one three-hour class, meaning that student and two or three colleagues will have prime responsibility for responding to questions about that week's reading. During his turn, Trevor did quite well. I recall, for example, his showing a good understanding of the subtle differences between the doctrines of exhaustion and implied license. Trevor's ability to grasp and articulate such differences between complex legal theories suggests he will do well as a law clerk and, ultimately, as an attorney.

I understand Trevor grew up and worked on a farm when he was younger. Coming from that background, his biomedical engineering degree and success at Georgetown Law suggest a keen mind and a strong intellect. His grade in my class – an A, which is impressive, given the subject matter – confirms both.

I highly recommend Trevor for consideration as a law clerk, and am more than happy to discuss my recommendation.

Sincerely,



Joseph A. Micallef

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

May 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Trevor Rhodes for a judicial clerkship. Mr. Rhodes will excel in this role.

Mr. Rhodes was a student in my Legal Practice class during his first year at Georgetown Law. Legal Practice is a year-long legal research and writing course, organized so that students research and write (and re-write, and re-write again) a number of increasingly complex assignments throughout the year. The Fall semester focuses on objective memoranda, while in the Spring we turn to persuasive advocacy. Throughout the year, I also include a number of smaller units designed to introduce students to other practical lawyering skills such as oral argument and writing for a variety of audiences.

Because Legal Practice is a year-long class, no grade is awarded until the end of the year, and because Georgetown switched to mandatory Pass/Fail in Spring 2020 (due to the pandemic), the only "grade" that I could award for the entire year was a "Pass" (or "Fail"). Mr. Rhodes, however, did far more than "pass" the class. His work was easily in the top fifteen of my fifty-two students on every measure. He paid close attention to both the bigger picture and the necessary details. Indeed, as to the latter measure, Mr. Rhodes had a perfect score on a test that I give to measure facility with citation, grammar, punctuation, and similar items.

Mr. Rhodes has seized additional opportunities to hone his research and writing skills, including as an Executive Editor of Georgetown's Annual Review of Criminal Procedure. He has also pursued such opportunities in practice settings including legal intern positions with both the U.S. Department of Health and Human Services and the U.S. Attorney's Office for the District of Columbia where he prepared both written and oral presentations of his legal research and evidentiary findings on a wide variety of topics.

Mr. Rhodes' success is all the more remarkable in light of his having a degenerative eye disease. At the beginning of his first semester, Mr. Rhodes contacted me directly to discuss the minor accommodations necessary for him to thrive in my classroom. I appreciated his forthrightness on the subject and that he arrived with logical and easily implemented solutions at the ready.

Mr. Rhodes' disability had no discernible negative impact on his ability to produce top-level work in my (often quite difficult) class. Indeed, he brought a welcome diverse perspective to the discussion. Mr. Rhodes has more than risen to the challenge of his limited eyesight. The lessons that he has learned have resulted in skills that will be an asset in any workplace, including the discipline to listen closely and the creativity to solve whatever obstacles he may encounter.

Mr. Rhodes is motivated to pursue a judicial clerkship for several reasons. Top among them is Mr. Rhodes' determination that, as a future litigator, a clerkship offers unparalleled opportunities to learn the system from the inside out. He also appreciates the opportunity for exposure to a wide variety of substantive areas—a particular advantage for someone like Mr. Rhodes with wide-ranging interests, spanning intellectual property, health law, and criminal law. Finally, Mr. Rhodes has worked hard at Georgetown, and he sees a clerkship as an excellent way to put all he has learned toward the public good.

I recommend Mr. Rhodes to you with no hesitation.

Sincerely,

Rima Sirota

Rima Sirota - rs367@law.georgetown.edu - (202) 353-7531

Trevor Rhodes

Writing Sample

May 2021

I wrote this memorandum for my Legal Writing Class at Georgetown. My professor gave us a fact pattern describing a compilation of information called “Flagship.” We were to write a memorandum discussing whether “Flagship” was a trade secret. I only had five days to research relevant cases, analyze case law, and write the memorandum. My professor restricted my query to only Alabama case law and some specific cases were excluded. The word limit was 1350 words. Because of the short word limit, this memorandum contains no “Facts” section.

For context, CollegeRenter is a real estate company that buys and sells apartment buildings and leases apartments within those buildings. CollegeRenter developed an electronic database called “Flagship” which contains information about many apartment buildings. CollegeRenter uses Flagship to determine the value of a building and to set apartment rental rates. This memorandum discusses whether Flagship is a “trade secret” under Alabama law.

MEMORANDUM

To: Law Firm

From: Trevor Rhodes

Date: November 20, 2019

Re: CollegeRenter—“Trade secret” status for “Flagship” compilation of information

Question Presented

Under Alabama law, is CollegeRenter’s compilation of information, Flagship, a “trade secret”?

Brief Answer

Flagship is likely a “trade secret” because all six elements are met. Flagship influences CollegeRenter’s purchases of buildings and thus is “used in a business.” Flagship is “embodied in a compilation” because it is compiled apartment building data. CollegeRenter developed Flagship itself and has not shared it with the public, likely rendering it not “publicly known” and not “generally known in the trade.” Flagship is likely “not readily ascertainable” from public information because CollegeRenter spent two years gathering the information. Password protecting and labeling Flagship confidential, among other precautions, are likely “reasonable efforts” to protect its secrecy. Flagship is the main reason for CollegeRenter’s success, therefore having “significant economic value.”

Discussion

Information is a “trade secret” when it is (1) “used in a business,” (2) “embodied in a compilation,” (3) “not publicly known and not generally known in the trade,” (4) “not readily ascertainable” from public information, (5) the subject of “reasonable efforts” in the circumstances to keep the information secret, and (6) of “significant economic value.” Ala. Code

§ 8-27-2(1) (2019). Flagship identifies which buildings CollegeRenter should purchase, meeting the first element. Flagship is a compilation of information from thousands of apartments, meeting the second element. Additionally, Flagship has “significant economic value” because it is crucial to the company’s success.

However, whether the third, fourth, and fifth elements are met is less clear, so these elements are analyzed below. First, this memo explains that Flagship is likely “not publicly known and not generally known in the trade.” Second, this memo explains that Flagship is likely “not readily ascertainable from public information.” Lastly, this memo explains that CollegeRenter’s attempts to keep the information secret are very likely “reasonable efforts.”

(3) Not Publicly Known and Not Generally Known in the Trade

Flagship is likely “not publicly known and not generally known in the trade.” Information meets this element if (1) specific parts of the information are unknown to the public and to those in the same trade as the holder; or (2) if those who know the complete information are partners in a joint venture. See, e.g., Ex parte W.L. Halsey Grocery Co., 897 So. 2d 1028, 1034 (Ala. 2004). If the information is not “generally known in the trade” it has also been considered not “publicly known.” See, e.g., id. The grocery’s “trade secret” was a compilation of its customer and general business information into one document. Id. Although a competitor could determine some of the information, because “the average businessman in the grocery store trade will not know” all the information, the information was not “generally known in the trade.” Id. Customer lists were not “generally known in the trade” because the information was created and developed by Movie Gallery and was specific to its clients and customers. Movie Gallery US, LLC v. Greenshields, 658 F. Supp. 2d 1252, 1263-64 (M.D. Ala. 2009). Delta Machinery shared its flesh-sensing technology with four other companies who were its partners in a joint venture; the technology

remained “not known generally in the trade.” Ex parte Delta Int’l Mach. Corp., 75 So. 3d 1173, 1180 (Ala. 2011).

No evidence exists showing all of Flagship is known by anyone other than those in CollegeRenter and Saban’s Real Estate (Saban’s). Because Flagship is more comprehensive than the compilations of competitors, it must contain more information. Like the document in W.L. Halsey, because *all* the information is not known by competitors, Flagship is not “generally known in the trade.” See 897 So. 2d at 1034. Flagship was also compiled by CollegeRenter and contains many details about the company’s business (apartment buildings). Therefore, like the information in Movie Gallery, this information is not “generally known.” See 658 F. Supp. 2d at 1264. CollegeRenter grants Saban’s, a partner in a joint venture, access to Flagship. Like in Delta, this does not affect whether the information is “generally known in the trade.” See 75 So. 3d at 1180.

(4) Not Readily Ascertainable

Flagship is likely “not readily ascertainable” from public information. This element is met if specific parts of the information are not available to the public, or if “substantial resources” were invested acquiring the information. See, e.g., Pub. Sys., Inc. v. Towry, 587 So. 2d 969, 972-73 (Ala. 1991). In Delta, much of the flesh-sensing technology was exposed in legal trials and patents. 75 So. 3d at 1180. Because some parts of the information were not public, the information was “not ascertainable” from public information. Id.

No cases available held information was “not readily ascertainable” based solely on the efforts required to obtain the information. In all cases at least some information has been unavailable to the public. E.g., 658 F. Supp. 2d at 1264 (holding that if a competitor obtained information from hundreds of stores over thousands of miles, some information would still not

be available because it was subject to confidentiality agreements). However, this element's purpose was to prevent information from being "trade secrets" that was available to the public and did not require "substantial time" to obtain. Section 8-27-2 Comment. Also, some cases imply that if a company invested "substantial time" obtaining information, it is "not readily ascertainable." In Public Systems, a data program containing publicly available information was "readily ascertainable" because the company spent several years *determining* what information *to obtain*, instead of actually *obtaining* information. 587 So. 2d at 972-73. Therefore, if the company had spent "substantial time" gathering the information, it likely would have been "not readily ascertainable." See id.

Because Bonner, CollegeRenter's CEO, admits that the information in Flagship is obtainable by anyone, whether it is "not readily ascertainable" depends on whether a court would find that it took "substantial time" to gather the information. Flagship was developed in two years and requires three researchers to keep the information current. It contains approximately twenty-five data points on 10,000 properties. Although we have no indication from the courts what is "substantial time," such a vast investment would likely be enough. This investment is likely greater than that required in Movie Gallery for a competitor, traveling thousands of miles to hundreds of stores, to obtain customer lists. 658 F. Supp. 2d at 1264. Again, all information on those customer lists was not available if competitors went to the stores, so "substantial time" was not the sole reason the lists were "not readily ascertainable." Id.

(5) Reasonable Efforts

CollegeRenter very likely used "reasonable efforts" in the circumstances to keep Flagship secret. This element is met if the holder limits access to the information, informs those with access of its confidentiality, and requires those with access outside of the business to sign

confidentiality agreements. See, e.g., 897 So. 2d at 1035. Password protecting computers containing the “trade secret” and marking the information as “confidential” were “reasonable efforts.” Unisource Worldwide, Inc. v. S. Cent. Ala. Supply, LLC, 199 F. Supp. 2d 1194, 1210 (M.D. Ala. 2001), Entering into confidentiality agreements with joint venture partners who had access to the “trade secret” were “reasonable efforts.” 75 So. 3d at 1180.

Like the company protecting secrets in Unisource Worldwide, CollegeRenter limits access to its information by password protecting its computers and informs those with access of its confidentiality by marking Flagship “confidential.” Id. Additionally, CollegeRenter grants regular access to only six employees, although three more employees have accessed the information in the past three years. However, the number of employees that have accessed the information is not dispositive of “reasonable efforts.” See Ex parte Indus. Warehouse Servs., Inc., 262 So. 3d 1180, 1185-87 (Ala. 2018) (holding that the bills of lading were “trade secrets” even though IWS shared the information with its employees). Like Delta Machinery, CollegeRenter required its partner, Saban’s, to sign a confidentiality agreement. 75 So. 3d at 1180.

Applicant Details

First Name **Llewellyn**
 Middle Initial **X**
 Last Name **Richie**
 Citizenship Status **U. S. Citizen**
 Email Address llewellyn.richie@law.bison.howard.edu

Address	Address Street 738 Longfellow Street NW, Apt 310 City Washington State/Territory District of Columbia Zip 20011 Country United States
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Contact Phone Number **2025204056**

Applicant Education

BA/BS From **George Washington University**
 Date of BA/BS **May 2019**
 JD/LLB From **Howard University School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=50906&yr=2011
 Date of JD/LLB **May 10, 2024**
 Class Rank **20%**
 Law Review/Journal **Yes**
 Journal(s) **Howard Human & Civil Rights Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Professional Organization

Organizations **Just the Beggining**

Recommenders

Ross, Josephine
jross@law.howard.edu
202.806-8260

Chisolm, Tuneen
tuneen.chisolm@howard.edu

Hawkins, Haley
haley_hawkins@dcd.uscourts.gov

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Xavier Richie

738 Longfellow St. NW Apt. 310,

June 7, 2023

The Honorable Jamar Walker
U. S. District Court for the Eastern District of Virginia
Walter E. Hoffman U. S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a rising third-year student at Howard University. I am applying for a position in your chambers. I am also open to clerking any future federal courts and administrative law and policy. I am interested in the rich history and culture and welcome the

I hope to clerk for your chambers because of your expertise as a criminal and civil litigator. As someone considering those fields, learning from you would be invaluable. I am also interested in intellectual property, among other subjects.

Furthermore, I will be an impactful asset to your chambers. I have worked for the District of Columbia, where I was reasoning with little alteration. This fall, I will be working for Judge Howell of the same court. And, also in the Criminal Justice Rights Clinic, an intense, six-credit clinic where I have worked for federal courts. Also, with experience as the editor of the journal, I have completed with exceptional organization and timeliness.

Enclosed, please find my resume, law school transcripts, and a letter of recommendation. Please let me know if I can provide any additional information.

Respectfully,



Xavier Richie

Xavier Richie

Washington, D.C.

Llewellyn.Richie@law.bison.howard.edu | (202) 520-4056

EDUCATION

Howard University School of Law, Washington, D.C., *J.D. Candidate* Expected May 2024
 GPA: 3.78 (Top 20%) Activities: Editor-in-Chief, *Howard Human & Civil Rights Law Review*;
 President, *Graduate Student Assembly*
Johns Hopkins University, Baltimore, MD, *M.S. in Electrical Engineering* Dec. 2020
George Washington University, Washington, D.C., *B.S. in Electrical Engineering* May 2019
 Honors: Dean's List, SJT Scholar (full merit scholarship for 8 D.C. public school graduates)

LEGAL EXPERIENCE

U.S. District Court for the District of Columbia, Washington, D.C.
Judicial Intern for Hon. Judge Beryl A. Howell's Chambers Aug. – Dec. 2023
Judicial Intern for Hon. Judge Reggie B. Walton's Chambers Jan. – Mar. 2023

- Drafted a bench memorandum responding to a defendant's motion to dismiss resting on *res judicata* that was adopted by Judge Walton.

Latham & Watkins LLP, Washington, D.C.
2L Summer Associate May – Aug. 2023
1L Summer Associate May – Aug. 2022

- Drafted research memoranda for patent litigation attorneys on issues involving willful infringement, local attorney misconduct rules, and third-party privilege.
- Conducted time-sensitive research on FOIA issues involving potentially unlawful redaction of information relating to bank statements, criminal records, and other requested documents.
- Contributed to a Board of Immigration Appeals brief for Sierra Leonean asylees.

Howard University School of Law, Washington, D.C.
Teaching Assistant for Professor Tuneen Chisolm's Constitutional Law I Course Jan. – May 2023
Research Assistant for Professor Tuneen Chisolm Sep. – Dec. 2022

U.S. International Trade Commission, Washington, D.C.
Student Law Clerk Aug. – Nov. 2022

- Drafted legal research memoranda on issues including (a) the implications of third-party litigation agreements for standing, (b) the quantum of proof necessary to establish infringement of "configuration-type" patent claims, and (c) the substantive sufficiency of unfair import (19 U.S.C. § 1337) complaints.

OTHER WORK EXPERIENCE

Alarm.com, McLean, VA
Device Engineer Jun. 2020 – Aug. 2021

- Developed approximately ten detailed test plans for the Radio Frequency Team.
- Conducted engineering tests, analyzed results, and drafted reports proposing procedures for the team.

Leidos, Arlington, VA
Signal Processing Engineer Apr. 2019 – Jan. 2020

- Collaborated with other members of the engineering team to develop innovative electronic warfare solutions for the U.S. Department of Defense.
- Researched ferromagnetic resonance, power amplifiers, and phased array antennas.

PUBLICATIONS

- Xavier Richie, *To Defer, or Not to Defer: An Examination of Comity Amongst the Commission & Its Sister Agencies*, 337 REP.: THE PAUL J. LUCKERN SUMMER ASSOCIATE EDITION, Summer 2022.

COMMUNITY SERVICE & INTERESTS

- Mentored Thurgood Marshall Academy students interested in legal careers. (2022)
- Volunteered with So Others Might Eat to feed unhoused persons in D.C. (2017–19)
- Long-distance running, the Green Bay Packers, cars, weight training.

Display Transcript

@02735281 Llewellyn X. Richie
May 11, 2023 10:31 am



This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

[Institution Credit](#) [Transcript Totals](#) [Courses in Progress](#)

Transcript Data

STUDENT INFORMATION

Curriculum Information

Current Program

Juris Doctor

Program: Juris Doctor

College: School of Law

Major and Department: Law, Law

***Transcript type:WEB is NOT Official ***

DEGREES AWARDED

Sought: Juris Doctor

Degree Date:

Curriculum Information

Primary Degree

Major: Law

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2021

College: School of Law

Major: Law

Student Type: First-Time Professional

Academic Standing:

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
LAW	507	Main	LW	Leg. Reg.	83	3.000	249.00			
LAW	617	Main	LW	Torts	86	4.000	344.00			
LAW	619	Main	LW	Civil Procedure I	88	4.000	352.00			

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	11.000	11.000	11.000	11.000	945.00	85.91
Cumulative:	11.000	11.000	11.000	11.000	945.00	85.91

Unofficial Transcript

Term: Spring 2022

College: School of Law

Major: Law

Student Type: Continuing

Academic Standing:

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
LAW	612	Main	LW	Constitutional Law I	98	3.000	294.00			
LAW	613	West/Law	LW	Legal Reasoning Research Write	83	4.000	332.00			
LAW	614	West/Law	LW	PROPERTY	80	4.000	320.00			
LAW	615	Main	LW	Contracts	80	5.000	400.00			
LAW	616	West/Law	LW	Criminal Law	89	3.000	267.00			

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	19.000	19.000	19.000	19.000	1613.00	84.89
Cumulative:	30.000	30.000	30.000	30.000	2558.00	85.27

Unofficial Transcript

Term: Summer 2022

College: School of Law

Major: Law

Student Type: Continuing

Academic Standing:

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
LAW	792	Main	LW	CD:Business Org	89	4.000	356.00			

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	4.000	4.000	4.000	4.000	356.00	89.00
Cumulative:	34.000	34.000	34.000	34.000	2914.00	85.71

Unofficial Transcript

Term: Fall 2022

College: School of Law

Major: Law

Student Type: Continuing

Academic Standing:

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
LAW	621	Main	LW	Constitutional Law II	88	3.000	264.00			
LAW	680	Main	LW	Federal Courts	92	3.000	276.00			
LAW	687	West/Law	LW	Professional Responsibility	85	3.000	255.00			
LAW	724	Main	LW	Trademark Law	90	3.000	270.00			

LAW 771 Main LW CD: Commercial Law 93 3,000 279.00

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15,000	15,000	15,000	15,000	1344.00	89.60
Cumulative:	49,000	49,000	49,000	49,000	4258.00	86.90

Unofficial Transcript

Term: Spring 2023

College: School of Law
Major: Law
Student Type: Continuing

Academic Standing:

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
LAW	623	West/Law	LW	Administrative Law	90	3.000	270.00			
LAW	654	West/Law	LW	Legal Writing II	89	2.000	178.00			
LAW	692	Main	LW	Remedies	90	3.000	270.00			
LAW	845	Main	LW	CD: Reentry Clinic I Exp	98	3.000	294.00			

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	11,000	11,000	11,000	11,000	1012.00	92.00
Cumulative:	60,000	60,000	60,000	60,000	5270.00	87.83

Unofficial Transcript

TRANSCRIPT TOTALS (LAW) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	60,000	60,000	60,000	60,000	5270.00	87.83
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	60,000	60,000	60,000	60,000	5270.00	87.83

Unofficial Transcript

COURSES IN PROGRESS -Top-

Term: Fall 2021

College: School of Law
Major: Law
Student Type: First-Time Professional

Subject	Course	Campus	Level	Title	Credit Hours	Start and End Dates
LAW	613	Main	LW	Legal Reasoning Research Writ	0.000	
LAW	615	Main	LW	Contracts	0.000	

Unofficial Transcript

Term: Fall 2022

College: School of Law
Major: Law
Student Type: Continuing

Subject	Course	Campus	Level	Title	Credit Hours	Start and End Dates
LAW	817	Main	LW	HHCR Law Review Editors	0.000	

Unofficial Transcript

Term: Spring 2023

College: School of Law
Major: Law
Student Type: Continuing

Subject	Course	Campus	Level	Title	Credit Hours	Start and End Dates
LAW	626	Main	LW	Antitrust Law	3.000	
LAW	817	Main	LW	HHCR Law Review 2L	0.000	

Unofficial Transcript

Term: Fall 2023


College: School of Law
Major: Law
Student Type: Continuing

Subject	Course	Campus	Level	Title	Credit Hours	Start and End Dates
LAW	525	Main	LW	Advanced Civil Procedure	3.000	
LAW	629	Main	LW	Evidence	4.000	
LAW	686	Main	LW	Patent Law	3.000	
LAW	721	Main	LW	Civil Rights Clinic I	4.000	

Unofficial Transcript

[Overall Financial Aid Status](#)[Financial Aid Eligibility Menu](#)[View Status of Transcript Requests](#)

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 JOHNS HOPKINS UNIVERSITY		G W C WHITING SCHOOL OF ENGINEERING Baltimore, MD 21218 www.jhu.edu/registrar		ENGINEERING FOR PROFESSIONALS TRANSCRIPT	
Student Name Richie, Llewellyn Xavier, Jr.		Person ID 3EB87B	Date of Birth 07/24/xxxx	JHU Degree and Date Conferred Master of Science 12/31/2020 Electrical and Computer Engineering	
Advisor Weiss, Steven					Date Printed 4/5/2023 Page 1 of 1

<u>DIV</u>	<u>DEPT</u>	<u>CRSE #</u>	<u>COURSE TITLE</u>	<u>GRADE</u>	<u>CREDITS</u>
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Fall 2019 Electrical and Computer Engineering

EN	ECE	525.618	Antenna Systems	A+	3.0
EN	ECE	525.623	Principles of Microwave Circuits	B	3.0
EN	ECE	525.774	RF & Microwave Circuits I	A	3.0

Spring 2020 George Washington University
Applied Electromagnetics

Due to the global COVID-19 pandemic, students could choose that final grades for Spring 2020 semester courses be reported as Pass/Fail.

Spring 2020 Electrical and Computer Engineering

EN	ECE	525.606	Electronic Materials	A+	3.0
EN	ECE	525.775	RF & Microwave Circuits II	B	3.0
EN	MAT	515.617	Nanomaterials	A	3.0
EN	MAT	515.634	Fundamentals of Metamaterials	A-	3.0

Due to the global COVID-19 pandemic, students could choose that final grades for Spring 2020 semester courses be reported as Pass/Fail.

Summer 2020 Electrical and Computer Engineering

EN	EPM	575.752	Environmental Justice and Ethics	A	3.0
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Fall 2020 Electrical and Computer Engineering

EN	ECE	525.771	Propagation of Radio Waves	A	3.0
EN	ECE	525.787	MMIC Design	B	3.0
EN	EPM	575.635	Environ Law for Engr & Scientists	B+	3.0

Advisors

Abita, Joseph L 12/20/2019 - 6/11/2020
Weiss, Steven 6/12/2020 - 12/31/2020 - (Primary Advisor)

*****End Of Transcripts*****

THIS INFORMATION HAS BEEN RELEASED IN ACCORDANCE WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) AND CANNOT BE FURTHER DISCLOSED TO ANY OTHER PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE STUDENT.

The original transcript is in electronic PDF form. A printed copy of this transcript is not an original and is not considered to be an official transcript.


Craig A. Smith, Deputy University Registrar

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Earnest; hard-working; resourceful. These three words come to mind when I think about law student Xavier Richie. I write to recommend him to your chambers for I know he will shine as a law clerk just as he does as a law student.

Xavier was in my Reentry Clinic in the Spring of 2023. This is an intensive course where I come to know my students well. In addition to the highly interactive class period, I meet every week for an hour with each student to help them prepare their client's case. From that first class, Xavier raised the bar by preparing more than any other student for the oral presentation. Students were given a new statute along with a documentary to watch and told to put them together by arguing to seal the conviction of one of the returning citizens interviewed in the documentary (their "client"). What impressed me most about Xavier's presentation was his organization. He understood the statutory requirements thoroughly and connected the facts of his "client's" situation to the law in the manner of a seasoned appellate advocate. This bit of persuasive advocacy based on extensive preparation foretold all his work throughout the semester.

At the start of the clinic semester, I gave Xavier one of the most difficult cases our clinic ever handled. It was a motion to seal based on actual innocence where he must rely almost entirely on a trial transcript where several witnesses testified including our client and the complaining witness. While I used our weekly meetings to help him craft a convincing factual argument from the morass of facts, Xavier went beyond this, vigorously researching the DC case law on self-defense, defense of property, and "mistaken touching" in battery. Xavier believed an appellate-like legal argument would supplement his factual assertions and he brought me a dozen pages of well-reasoned argument rooted in the case law. While there's always a danger that the court will view a legal argument as tending towards "not guilty" rather than actual innocence, in the end, I had to agree that his work paid off and greatly improved his motion.

Writing is an important craft for a law clerk, and Xavier is an excellent writer. I always appreciate it when a student gives me drafts ahead of our meetings which Xavier consistently did. In class, I used Xavier as an example when describing the benefits of turning in early drafts. Not only did Xavier begin the process of drafting early, he continued to research and write, improving the emphasis, structure and wording as he polished and re-polished. He filed the motion at the end of the semester, a benefit of the strict schedule he created and abided by.

All students have clinic partners and Xavier worked extremely well with his. They consulted each other about their cases and challenges, and when her case ended early, they divided some of the labor on the transcript and even portions of the brief. Unusually generous, Xavier credited his partner, submitting the brief in both their names although it was 95% his work, not something any other student has done.

The clinic also provides leadership opportunities, and Xavier did this in spades. He lead a project where students met with prisoners in the DC jail for few hours, an exchange that went deep according to other law students who participated. I plan to add this to the clinic in future semesters.

I first came to know Xavier through zoom. In October of 2022, he reached out asking if I would serve as his law review note advisor and we talked about his vision for the note. I agreed to do this as the topic fits with my interests - Antiterrorism and Effective Death Penalty Act - and Xavier was clearly a motivated candidate. He ended up arguing for the repeal of the AEDPA based on the history of habeas corpus from common law to the present. Unlike many other law students I supervised for Howard publications, Xavier was able to hone down and focus his project in short order. His ability to turn around drafts and incorporate feedback was what lead me to assign him the challenging innocence motion when he entered the clinic the following semester.

What I have not described yet is Xavier's personality. Xavier is a nice person, an honest person, and he's surprisingly modest. He worked well with everyone in the clinic and improved his leadership skills. Xavier enjoys an intellectual challenge, and he cares deeply about the state of our city and world. That's what drew him to the clinic and that's what will keep him engaged in pro bono or civil rights work for the rest of his life. I'm confident that Xavier will also become a successful litigator because he knows how to talk to different types of people, how to communicate to a jury or other audiences, and his writing skills will come in handy too. Most importantly, his firm can count on Xavier Richie to arrive fully prepared.

Please consider extending an offer to this industrious young man.

Sincerely,

Josephine Ross
Professor of Law
Howard University School of Law
jross@law.howard.edu

Josephine Ross - jross@law.howard.edu - 202.806-8260

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am beyond pleased for this opportunity to enthusiastically recommend Llewellyn Richie for this judicial clerkship position! Consistently, Richie (I use last names) has demonstrated a remarkable work ethic, a high level of intellectual curiosity and maturity, and an unwavering commitment to thoroughly performing every role in which I have had the pleasure of working with him since January 2022. He is personable, respectful, considerate, and well-rounded. I am confident that Richie will be a law clerk on whom you can comfortably rely for all aspects of the job.

I met Richie in my Con Law I class (Spring 2022) and subsequently had him in Con Law II (Fall 2022). He was always on time, prepared and engaged in class. He gave thoughtful consideration to the material and how it applied beyond the classroom; thus, we have engaged in many conversations about the contours of constitutional law as they present in the daily news. His final exam essay responses were among the anonymized model answers I posted for the rest of the class. I invited Richie to be my Teaching Assistant for Con Law I (Spring 2023) and that was an unpaid position. Richie took it on, full press, providing a generous schedule of weekly office hours throughout the entire semester to supplement my own. Based upon my observation of Richie's interaction with his classmates and my first-year students, he enjoys helping others to understand and excel, which will make him an asset in chambers with respect to judicial externs, once he is established as a law clerk.

As my Research Assistant (Fall 2022), also an unpaid position, Richie was a dependable self-starter. He timely delivered the empirical research I needed on the impact of *Matal v. Tam* on the registration of derogatory terms previously barred by the disparagement clause of Section 2(a) of the Lanham Act, and he took the initiative to organize and present his research results and data in a format that was visually helpful and easy to trace. Richie is also the recently elected Editor-in-Chief of the Howard Human and Civil Rights Law Review, for which I serve as a faculty advisor. I witnessed his March election campaign against his classmate and friend, and must note that his confident, yet collegial articulation of his vision and his fit for the leadership role was admirable and already has been substantiated.

Finally, I have gotten to know Richie as an advisee and an informal mentee. We connected, upon first meeting, on both being former engineers who decided to pursue a career in law with an interest in intellectual property. I believe his approach to legal analysis is practical and methodical, yet simultaneously creative and flexible enough to account for things that are not necessarily formulaic. I am confident that he will be a judicial law clerk who contributes to your docket and chambers on the same magnitude as I expect he will grow from the experience.

Again, I heartily recommend Richie for this judicial clerkship. Please do not hesitate to reach out if you would like to speak with me as you consider his application. You may reach me via email at tuneen.chisolm@howard.edu or by phone at 678.763.6405. Please note that I will be traveling intermittently over the summer, so email is a best method for initial contact.

Kindest regards,

Tuneen Chisolm
Associate Professor of Law
Howard University School of Law
<http://law.howard.edu/faculty-staff/tuneen-chisolm>

Tuneen Chisolm - tuneen.chisolm@howard.edu



Chambers of
Reggie B. Walton
United States District Judge

United States District Court
for the District of Columbia
Washington, D.C. 20001

May 4, 2023

Dear Judge:

I write to enthusiastically recommend Xavier Richie for a clerkship in your chambers. I currently serve as a law clerk to the Honorable Reggie B. Walton of the United States District Court for the District of Columbia.

Xavier served as one of five interns in Judge Walton's chambers during the spring of 2023. Interns for Judge Walton are responsible for drafting substantive writing assignments resolving pending motions in active cases before Judge Walton, including memorandum opinions, orders, and bench memoranda; editing and Bluebooking opinions and orders drafted by Judge Walton's clerks; and attending Judge Walton's hearings.

As Xavier's direct supervisor, I found his work to be excellent. For his main substantive assignment, he prepared a bench memorandum to assist Judge Walton in resolving a motion to dismiss during a hearing. This assignment required significant research skills, analysis, and critical thinking on Xavier's part, as it involved a relatively complex application of the doctrine of claim preclusion. Xavier effectively tackled the assignment head on. His research was thorough, and his draft bench memorandum was well-constructed. Throughout the drafting process, Xavier exhibited independence and self-motivation, while also initiating and engaging in productive conversations with me regarding the assignment and his progress. He responded particularly well to written and oral feedback and produced a revised version which required little editing on my part to be presented to Judge Walton—something that is fairly uncommon with intern drafts in our chambers. As a result of Xavier's hard work, Judge Walton was able to resolve the pending motion to dismiss shortly after the hearing.

Additionally, Xavier is a pleasant and friendly person, and was well-liked in chambers. I have no doubt that Xavier's strong writing and research skills, work ethic, and personability would make him a valuable addition to any chambers. I would be happy to discuss his qualifications in further detail and can be reached at (336) 404-2873.

Sincerely,

A handwritten signature in black ink that reads "Haley Hawkins".

Haley Hawkins
Law Clerk to the Hon. Reggie B. Walton
Term: October 2021 to September 2023

Xavier Richie

Washington, D.C.

Llewellyn.Richie@law.bison.howard.edu | (202) 520-4056

Writing Sample

This unedited writing sample is a fifteen-page bench memorandum I wrote during the spring 2023 semester as an intern for Judge Reggie B. Walton. Judge Walton permitted me to use this as a writing sample. The memorandum analyzes the defendant's motion to dismiss on the ground of *res judicata* (claim preclusion) because of allegedly similar claims raised in prior and parallel proceedings. I have replaced relevant party names, case names, and docket numbers with fake names for confidentiality. Also, I have intentionally redacted parts for brevity.

MEMORANDUM

TO:	Judge Walton
FROM:	Jane Smith
CASE:	<i>Johnson v. United States</i> , Civ. Action No. 99-999
RE:	Motion Hearing (Teleconference) Call-in: 1-877-873-8017; Passcode: 99999999#
HEARING DATE:	Monday, November 29, 2021, at 1:00 p.m.

Pro se plaintiffs, Chad A. Johnson and Sam T. Johnson, file this civil action (“*Johnson VIII*”) against the defendants, the United States and Mr. James P. Adams, in his official capacity as Commissioner of the Internal Revenue Service (“IRS”). The Johnsons’ claims rest on the Fifth Amendment of the United States Constitution and the Administrative Procedure Act (“APA”). Complaint (“*Compl.*”) ¶¶ 55–69, ECF No. 1.

On July 3, 2019, the plaintiffs filed *Johnson VIII*. *See id.* at 1. On September 4, 2019, the defendants filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim under *res judicata*. *See* Defendants’ Motion to Dismiss the Complaint Under Claim Preclusion (“*Defs.’ Mot.*”) at 1, ECF No. 6. On October 18, 2019, the plaintiffs filed their opposition to the defendants’ motion to dismiss. *See* Plaintiffs’ Memorandum of Points and Authorities in Opposition to Defendants’ Motion to Dismiss the Complaint *Res Judicata* Under Authority of Fed. R. Civ. P. 12(b)(6) (“*Pls.’ Opp’n*”) at 1, ECF No. 7. On October 23, 2019, the defendants filed a reply in support of their motion to dismiss. *See* Defendants’ Reply in Support of Motion to Dismiss (“*Defs.’ Reply*”) at 1, ECF No. 8.

The parties now appear before the Court for a hearing on the defendants’ motion to dismiss. *See* Order at 1 (May 2, 2021), ECF No. 9. The defendants “move to dismiss the entire Complaint with prejudice under . . . [*res judicata*].” *Defs.’ Mot.* at 1. Specifically, the defendants contend that “[a]ll of . . . [*res judicata*]’s four elements are . . . satisfied[,]” since the “[p]laintiffs once again challenge the IRS’s determination that [the plaintiffs’] filed tax returns were ‘frivolous.’” Defendants’ Memorandum of Law in Support of Motion to Dismiss the Complaint (“*Defs.’ Mem.*”) at 1–2, ECF No. 6–2.

But the defendants fail to satisfy these elements, so I recommend denying the motion to dismiss. And I recommend consolidating *Johnson VII* and *IX* with this case because of similar facts and issues.

I. Background

A. Prior & Parallel Litigation

The plaintiffs have filed an ocean of lawsuits concerning their 2008 to 2010 tax returns, which the IRS rejected. Understanding the degree of factual and legal overlap in these lawsuits is imperative because the defendants' motion rests on *res judicata*. And it is necessary because Your Honor may consider consolidating parallel proceedings with this case to preserve judicial efficiency. Accordingly, the eight prior and parallel proceedings related to this case are discussed below.

i. *Johnson I*

On April 26, 2016, the plaintiffs filed *Johnson I* in the United States Tax Court “disputing an income tax liability alleged in a [N]otice of [D]eficiency issued [by the IRS] to [the plaintiffs] for tax year 2013.”¹ Order at 1, *Johnson v. Comm’r of Internal Revenue* (“*Johnson I*”), No. 9999-99 (T.C. Feb. 18, 2016), ECF No. 63. But the plaintiffs later “filed a number of motions objecting to the Tax Court’s jurisdiction and requesting withdrawal of their petition[.]” Brief for the Appellee at 15, *Johnson I*, No. 99-9999 (8th Cir. 2019). That court denied these motions and later dismissed the case for lack of prosecution, declaring “a deficiency in tax due from [the plaintiffs.]” Order of Dismissal and Decision at 1–2, *Johnson I*, No. 9999-99 (T.C. Aug. 9, 2016), ECF No. 82.

The United States Court of Appeals for the Eighth Circuit later affirmed the dismissal of *Johnson I*. See *Johnson I*, 999 F. Rep. 999, 999 (8th Cir. 2017) (per curiam).

ii. *Johnson II*

On October 12, 2014, the plaintiffs filed *Johnson II*, asserting “that they d[id] not owe any income taxes or penalties for fiscal years 2008 through 2013[.]” because “their income during this period was exempt from tax and[.] . . . incorrectly reported as income by third parties.” *Johnson v. United States* (“*Johnson II*”), No. 99-cv-999 (DGK), 2015 WL 9999999, at *1 (W.D. Mo. Sep. 14, 2015); see also Complaint at 1, *Johnson II*, No. 99-cv-9

99 (DGK), ECF No. 1. The plaintiffs sought “injunctive relief requiring the Kansas City Area Director of the . . . [IRS] to issue refunds, withdraw penalties, and refrain from taking further action against them.” *Johnson II*, 2015 WL 9999999, at *1.

The defendants moved to dismiss the *Johnson II* for lack of subject matter jurisdiction because

¹ “The Notice of Deficiency IRS Letters . . . are a taxpayer’s legal notice that the IRS is proposing a deficiency (balance due). These letters provide taxpayers with information about their right to challenge proposed IRS adjustments in the United States Tax Court by filing a petition within 90 days of the date of their notice[.]” *90 Day Notice of Deficiency*, Taxpayer Advocate Service, <http://www.taxpayeradvocate.irs.gov/notices/exam-90-day-notice-of-deficiency/> (last updated June 21, 2022).

(1) the Anti-Injunction Act prohibits the requested relief; (2) writs of mandamus are not available against the United States; (3) the Court cannot consider [the p]laintiffs' refund claims because they have not complied with the jurisdictional prerequisites to bring a tax refund suit against the United States; and (4) the Court cannot hear [the p]laintiffs' purported claim under 26 U.S.C. § 7433 because it does not provide jurisdiction for lawsuits challenging tax assessments, only for damages stemming from unauthorized tax collections.

Id. at *2. The Western District of Missouri judge agreed with the defendants' assertions, "dismiss[ing] [all claims] with prejudice for lack of subject matter jurisdiction." *Id.* at *4.

The United States Court of Appeals for the Eighth Circuit later affirmed the district court's dismissal of *Johnson II*. *Johnson II*, 999 F. App'x 999, 999 (8th Cir. 2016) (per curiam).

iii. *Johnson III*

On August 3, 2016, the plaintiffs attempted a second bite at the apple by filing *Johnson III*—with claims identical to *Johnson II*—in the Circuit Court of Clay County, Missouri. *See* Notice of Removal at 1, *Johnson v. United States* ("Johnson III"), No. 99-cv-999 (DGK), ECF No. 1. The sole defendant, the United States, removed *Johnson III* from that state court to the United States District Court for the Western District of Missouri, under 28 U.S.C. § 1442(a)(1). Notice of Removal at 1. In *Johnson III*, the plaintiffs "reassert[ed] their previous claims that were dismissed in [*Johnson II*]." *Johnson III*, No. 99-cv-999, 2016 WL 9999999, at *1 (W.D. Mo. July 13, 2016). The defendant responded by filing a motion to dismiss for lack of jurisdiction because (1) the "new lawsuit is barred by issue preclusion[;]" (2) the "claims are [] barred by sovereign immunity[;]" and (3) the "[p]laintiffs have not shown that they are entitled to writs of mandamus." *Id.*

Since these claims were identical to those of *Johnson II*, that court determined that "[a]ll the elements for issue preclusion [were] met." *Id.* at *4. Specifically, the (1) "[t]he parties [were] the same as in [*Johnson II*]," (2) "[t]he issue[] . . . [was] the same[;]" (3) "the [defendant] litigated this issue in its [m]otion to [d]ismiss in [*Johnson II*]," (4) "[t]he dismissal with prejudice constitute[d] a valid and final judgment[;]" and (5) "the determination in [*Johnson II*] was essential to the prior judgment." *Id.* at *2. Finding that "subject matter jurisdiction [was] lacking," that court "dismissed [*Johnson III*]." *Id.* at *3.

The United States Court of Appeals for the Eighth Circuit later affirmed the dismissal of *Johnson III*. *Johnson III*, 999 F. App'x 999, 999 (8th Cir. 2017) (per curiam).

iv. *Johnson IV*

On August 16, 2016, the plaintiffs filed *Johnson IV* with this Court, which was assigned to Your Honor. *See* Complaint ("Compl.") at 1, *Johnson v. United States* ("Johnson IV"), No. 99-cv-999 (RBW), ECF No. 1. In *Johnson IV*, the plaintiffs asserted that the IRS "repeatedly[] and wrongfully[] withheld"

records “that [the plaintiffs] have a lawful right to access pursuant to 5 U.S.C. § 552(d) . . . [.] without explanation.” Compl. at 4, *Johnson IV*, No. 99-cv-999 (RBW). The plaintiffs requested that

this Court [] provide a Writ of Mandamus compelling the Commissioner of Internal Revenue[] . . . to produce all five sections of IDRS Command Code A, TXMODA Series of Transcripts within 30 days[.] . . . a complete translation of the TXMODA Series of Transcripts[.] and to certify the accuracy of the translations under penalties of perjury[.]

Id. at 8–9 (emphasis removed). The requested tax transcripts were for 2008 to 2014. *See id.* at 9.

The defendants moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim because (1) the plaintiffs’ claim was moot, (2) the plaintiffs “simply cannot obtain this type of relief under the [Freedom of Information Act (‘FOIA’)] or the Privacy Act,” and (3) the plaintiffs “cannot show that the [defendant] has failed to take any action that is required by law[.]” Order at 1, 4 (Aug. 22, 2017), *Johnson IV*, No. 99-cv-999, ECF No. 14 (first alteration in original) (internal quotation marks omitted). This Court partially granted the defendants’ motion, dismissing all the plaintiffs’ claims aside from a “FOIA policy or practice claim” raised in their opposition brief. *Id.* at 6–7, 9. The remaining claims were consolidated with *Johnson V*. Order at 1 (Sep. 18, 2017), *Johnson IV*, No. 99-cv-999, ECF No. 17.

v. *Johnson V & Johnson VI*

On August 11, 2017, the plaintiffs filed *Johnson V*, assigned to Your Honor. *See* Complaint at 1, *Johnson v. United States* (“*Johnson V*”), No. 99-cv-999 (RBW), ECF No. 1. On February 22, 2018, while *Johnson V* pending, the plaintiffs hastily filed *Johnson VI*, which was also assigned to Your Honor. *See* Complaint at 1, *Johnson v. United States* (“*Johnson VI*”), No. 99-cv-9999 (RBW), ECF No. 1. This Court later consolidated *Johnson V* with *Johnson VI*. *See* Order at 2, *Johnson VI*, No. 99-cv-9999 (RBW), ECF No. 8. Collectively, the plaintiffs alleged that the defendants

(1) failed to release to the plaintiffs’ 2012 to 2015 tax returns . . . and the plaintiffs’ TXMODA transcript for 2015 . . . ; (2) adopted an improper policy or practice of withholding the plaintiffs’ 2008 to 2014 TXMODA transcripts, in violation of the FOIA and the Privacy Act . . . ; (3) performed “[u]nauthorized collection activities as provided [in] 26 U.S.C. § 7433[.]” in violation of the Fifth and Fourteenth Amendments to the United States Constitution . . . ; (4) refused to amend the plaintiffs’ tax returns, in violation of the Privacy Act . . . ; and (5) exceeded their statutory authority under 26 U.S.C. § 7433 in promulgating 26 C.F.R. § 301.7433-1(b)(2) . . . and improperly determined that the plaintiffs’ 2008 to 2015 tax returns were frivolous[.]

Johnson VI, No. 99-cv-9999 (RBW), slip op. at 6 (D.D.C. Oct. 22, 2018).

In both cases before consolidation, the defendants filed motions to dismiss for lack of subject matter jurisdiction and failure to state a claim. *Id.* at 4. Following consolidation, the Court granted both of the defendants’ motions for (1) “the ‘failure to release’ claims [being] moot[.]” (2) “fail[ing] to plead an ‘improper policy or practice’ claim under the FOIA or the Privacy Act[.]” (3) “issue preclusion[.]” (4)

lack of “subject matter jurisdiction over the plaintiffs’ Privacy Act claim[.]” and (5) this Court lacking “authority to review the plaintiffs’ APA claim[.]” *Id.* at 12–25, 27 (internal quotation marks omitted).

vi. *Johnson VII*

On September 12, 2018, the plaintiffs filed *Johnson VII*—active before Your Honor—asserting that the defendants wrongfully withheld various tax records “used by the [IRS] in their administrative determinations[.]” Amended Complaint (“Am. Compl.”) at 1, *Johnson v. United States* (“*Johnson VII*”), 99-cv-9999 (RBW), ECF No. 37; *see also* Complaint at 1, *Johnson VII*, 99-cv-9999 (RBW), ECF No. 1.

[Intentionally redacted]

In response, the defendants filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. *See* Memorandum Opinion (“Mem. Op.”) at 1, *Johnson VII*, No. 99-cv-9999 (RBW), ECF No. 47. This motion was limited to the plaintiffs’ 2008 to 2015 tax claims and rested on *res judicata* and improper joinder. *See id.* at 5, 9.

This Court denied the defendants’ *res judicata* argument because they failed to show that the present claims were identical to claims that were or could have been raised before. *Id.* at 6. Instead, the defendants’ “same underlying claim” argument conflated “the assumed purpose for the [documents sought by the plaintiffs’ FOIA] request[s] with the FOIA claim[s them]sel[ves].” *Id.* at 7. In sum, “[t]he ‘nucleus of facts’ that the Court . . . consider[ed] in adjudicating [the p]laintiffs’ FOIA claim[s] . . . [were] wholly different from what the previous courts assessed[.]” *Id.* at 7–8. Given this fatal failure, the Court denied the defendants’ motion to dismiss resting on *res judicata*. *Id.* at 9.

But this Court did “grant the defendants’ motion to dismiss to the extent it [sought] the dismissal of the claims against the United States, Adams, and Eisener.” *Id.* at 10.

vii. *Johnson IX*

On March 12, 2020, the plaintiffs filed *Johnson IX*—active before Your Honor—against the defendants, the United States and Mr. James P. Adams. Complaint (“Compl.”) at 1, *Johnson v. United States* (“*Johnson IX*”), 99-cv-9999 (RBW), ECF No. 1. There, the plaintiffs allege FOIA violations, APA violations, and that 26 U.S.C. § 7852(e) was unconstitutionally applied. *Id.* at 2–6.

Under count eleven, the plaintiffs assert that the defendants “fail[ed] to provide . . . meaningful [notice] of the issues of fact [or law] upon which [they] depend” in their LTR 105C disallowance notices for 2011, 2013, 2014, and 2015. *Id.* at ¶¶ 715–16. And the plaintiffs argue that this “failure to provide [the] plaintiffs with an explanation [as required] under 26 U.S.C. § 6402(l) deprives [the] plaintiffs of . . . due process required for [the] plaintiffs to prepare an action under 26 U.S.C. § 7422.” *Id.* at ¶ 717.

The plaintiffs seek injunctive relief, “mov[ing] th[is] Court to remand all [the] defendants’ disallowances on [] LTR 105C for . . . 2015; 2014; 2013; . . . 2012 for proper processing[.]” *Id.* at ¶ 720.

B. Legal Standard

i. Motion to Dismiss Under Rule 12(b)(1)

[Intentionally redacted]

Although *res judicata* “ha[s] a ‘somewhat jurisdictional character,’ [it] does not affect the subject matter jurisdiction of the district court.” *Small v. United States*, 471 F.3d 186, 190 (D.C. Cir. 2006) (citation omitted). And this Court has widely accepted that “a motion seeking application of claim . . . preclusion should be brought pursuant to Rule 12(b)(6) rather than Rule 12(b)(1)[.]” *Han v. Fin. Supervisory Serv.*, No. 18-cv-141 (EGS/GMH), slip op. at 10 (D.D.C. Sept. 9, 2019); *see also Youngin’s Auto Body v. District of Columbia*, 775 F. Supp. 2d 1, 6 (D.D.C. 2011) (Walton, J.) (“Although the defense of *res judicata* is jurisdictional in character, it is an affirmative defense, and therefore is not a per se jurisdictional bar to court review as contemplated by Federal Rule of Civil Procedure 12(b)(1)[.]”).

Since Rule 12(b)(6) is the proper vehicle to decide a motion to dismiss resting on *res judicata*—the defendants’ sole ground for dismissal—I will not address the defendants’ Rule 12(b)(1) motion.

ii. Motion to Dismiss Under Rule 12(b)(6)

Under Rule 12(b)(6), a court must grant a motion to dismiss if the complaint “fail[s] to state a claim upon which relief may be granted.” Fed. R. Civ. P. 12(b)(6). To survive this motion, the “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the [C]ourt to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). But Rule 12(b)(6) also “places [a] burden on the moving party[.]” forcing a “district court [to] answer the ‘single question’ whether the movant . . . ‘include[d] ‘enough facts to state a claim to relief that is plausible on its face.’”” *Cohen v. Bd. of Trs. of the Univ. of the D.C.*, 819 F.3d 476, 481 (D.C. Cir. 2016) (citation omitted).

In *pro se* cases, the standard for pleadings is less demanding than in “formal pleadings drafted by lawyers.” *Atherton v. D.C. Office of the Mayor*, 567 F.3d 672, 681 (D.C. Cir. 2009) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). Still, “a *pro se* complainant must plead ‘factual matter’ that permits the court to infer ‘more than the mere possibility of misconduct[.]’” *Id.* at 681–82 (quoting *Iqbal*, 556 U.S. at 678–79).

iii. The Doctrine of *Res Judicata*

Res judicata instructs that “a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Zellers v. United States*, 578 F. Supp. 2d 1, 3 (D.D.C. 2008) (Walton, J.) (quoting *Allen v. McCurry*, 449 U.S. 90, 94 (1980)). This doctrine bars the plaintiffs’ claim “if there has been prior litigation (1) involving the same claims or cause of action[;] (2) between the same parties or their privies[;] and (3) there has been a final, valid judgment on the merits[;] (4) by a court of competent jurisdiction.” *Small*, 471 F.3d at 192.

The first element requires this Court to determine “whether two cases implicate the same cause of action . . . [by examining] whether they share the same ‘nucleus of facts.’” *Drake v. F.A.A.*, 291 F.3d 59, 66 (D.C. Cir. 2002) (citing *Page v. United States*, 729 F.2d 818, 820 (D.C. Cir. 1984)). This is because “once a transaction has caused injury[,] all claims arising from that transaction must be brought in one suit or be lost[.]” *Polsby v. Thompson*, 201 F. Supp. 2d 45, 51 (D.D.C. 2002) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 789 F.2d 589, 593 (7th Cir. 1986)) (internal quotation marks omitted). This determination considers the following factors: “[1] whether the facts are related in time, space, origin, or motivation, [2] whether they form a convenient trial unit, [and (3)] whether their treatment as a unit conforms to the parties’ expectations or business understanding and usage.” *RSM Prod. Corp. v. Freshfields Bruckhaus Deringer U.S. LLP*, 800 F. Supp. 2d 182, 190-91 (D.D.C. 2011) (quoting *Apotex, Inc. v. Fed. Drug Admin.*, 393 F.3d 210, 217 (D.C. Cir. 2004)).

The plaintiffs may not “escape the consequences of *res judicata* ‘simply by changing the theory of recovery or seeking a different remedy . . . [or] simply by adding new factual allegations,’ so long as the subject matter of the two suits is substantially the same.” *Kissi v. EMC Mortg. Corp.*, 627 F. Supp. 2d 27, 33 (D.D.C. 2009) (Walton, J.) (quoting *Snell v. Mayor & City Council of Havre de Grace*, 837 F.2d 173, 176 (4th Cir. 1988)); see also *Humphrey v. Pharm Chem. Lab.*, 100 F. App’x 837, 837 (D.C. Cir. 2004) (finding the appellant’s claims “barred by *res judicata*, since he previously litigated substantially the same claims against that party in [another] action”). But “[r]es judicata does not bar parties from bringing claims based on material facts that were not in existence when they brought the [prior] suit.” *Apotex, Inc.* 393 F.3d at 218 (citing *Drake*, 291 F.3d at 66 (“The doctrine does not bar a litigant from doing in the present what he had no opportunity to do in the past.”)).

Because I recommend that the defendants fail the first element, the others will not be addressed.

iv. *Sua Sponte* Consolidation Under Rule 42(a)

Distinct from dismissal, Rule 42(a) permits federal courts to consolidate cases that “involve a common question of law or fact[.]” Fed. R. Civ. P. 42(a). Rule 42(a) “vests a purely discretionary power

in the district court,” permitting *sua sponte* consolidation. *Nat’l Ass’n of Mortg. Brokers v. Bd. of Governors of Fed. Reserve Sys.*, 770 F. Supp. 2d 283, 286 (D.D.C. 2011). Furthermore,

[i]n exercising [this] discretion, district courts must weigh the risk of prejudice and confusion wrought by consolidation against the risk of inconsistent rulings on common factual and legal questions, the burden on the parties and the court, the length of time, and the relative expense of proceeding with separate lawsuits if they are not consolidated.

Id. at 286. Consolidation “does not merge the suits into a single cause, [] change the rights of the parties, or make those who are parties in one suit parties in another.” *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479 (1933).

Also, the parties are not required to be identical, as “cases may be consolidated even where certain defendants are named in only one of the [c]omplaints[.]” *Nat’l Ass’n of Mortg. Brokers*, 770 F. Supp. 2d at 286. And even a small “overlap in issues presented by both [cases]” is a “sound basis for consolidation.” *Id.* (“[C]onsolidat[ing] two actions with the same defendant and different plaintiffs[] . . . [where] one action involved a ‘narrow’ challenge to the constitutionality of the District’s gun laws while the other action challenged ‘a host of other aspects of the District’s gun laws.’” (quoting *Hanson v. District of Columbia*, 257 F.R.D. 19, 21–22 (D.D.C. 2009))). This Court has found “consolidation [] particularly appropriate when the actions are likely to involve substantially the same witnesses and arise from the same series of events or facts.” *Hanson*, 257 F.R.D. at 21.

C. Factual Background

In this case, the plaintiffs “filed [] timely tax return[s] for tax period[s] ending” in 2014 and 2013, with signatures dated August 2, 2013, and August 11, 2014, respectively. Compl. ¶¶ 16–17, 44–45. These tax returns claimed refunds and were mailed under their respective “United States Postal Service Certified Mail Article [Numbers.]” *Id.* ¶¶ 18–19, 46–47. After mailing, the plaintiffs retained postmarked “Certified Mail Receipt[s]” and stamped “Green Return Receipt[s.]” *Id.* ¶¶ 20–21, 48–49.

The plaintiffs’ argued that neither of the tax returns were frivolous “within the meaning of 26 U.S.C. § 6702 and Notice 2010-33[.]” *Id.* ¶ 22, 50. But the defendants “disallowed [the plaintiffs’] timely non-frivolous” 2012 and 2013 tax returns “in LTR[]105C[s] dated” July 3, 2017, and July 15, 2017.² *Id.* ¶¶ 23, 51. The plaintiffs allege that the defendants did not cite legal authority for disallowing the plaintiffs’ tax returns. *Id.* ¶¶ 25–26, 52–53.

² Regarding the definition of an LTR 105C,

[t]he IRS disallows a claim by sending [the] Letter 105C to the taxpayer. Among other things, [the] Letter 105C advises the taxpayer of the right to Appeals consideration. The issuance of [the] Letter

The plaintiffs “appealed [the d]efendant’s LTR 105Cs[] . . . , to [the] IRS [Independent Office of] Appeals[(“Appeals”),] and requested [that the d]efendant provide them with the Appeals Case Memos for that Appeal.” *Id.* ¶¶ 27, 54 (emphasis removed). The defendants refused to provide the Appeals Case Memos. *Id.* ¶¶ 28, 55. The plaintiffs believe the defendants wrongfully withheld the Appeals Case Memos, given they are “subject to disclosure under the [FOIA] . . . , 5 U.S.C. § 552.” *Id.*

According to the LTR 105Cs, the defendants disallowed the tax returns because they were “based . . . on a frivolous position [not] supported by law” and “[f]ederal courts consistently rule against these arguments and may impose substantial fines[.]” *Id.* ¶¶ 30, 57 (internal quotation marks omitted). In response, the plaintiffs contend this is vague reasoning that fails to cite 26 U.S.C. § 6702 as its authority. *Id.* ¶¶ 31–32, 58–59. And that the defendant “has not carried its burden under 26 U.S.C. § 6703(a) for purposes of establishing the [plaintiffs’] . . . 2013 tax return as frivolous under 26 U.S.C. § 6702” or “26 U.S.C. § 7491(c)[.]” *Id.* ¶¶ 33–34, 60–61. The plaintiffs also note the absence of “a signed assessment on Form 4340 or Form 23C for frivolous penalties pursuant to 26 C.F.R. § 301.6203-1.” *Id.* ¶¶ 35, 62.

In sum, the plaintiffs argue they were not provided “with [notice] as required by due process[.]” “a reasoned opinion as required by due process[.]” “notice of the law[.]” or “notice of the facts[.]” *Id.* ¶¶ 36–39, 63–66. They further argue that this failure to provide notice violates 26 U.S.C. § 6402(l) and the Due Process Clause of the Fifth Amendment to the United States Constitution. *See id.* ¶¶ 40–41, 67–68.

As relief, the plaintiffs seek to “[vacate] [the defendants’] LTR 105C[] . . . letter of disallowance and [remand] the . . . [plaintiffs’] tax return to [the d]efendants for proper processing under authority of the [IRC.]” *Id.* at 8, 10. The plaintiffs assert that proper adjudication requires following the requirements under “IRC sections 6402, 6702, 6703, and 7491.” *Id.* ¶¶ 42, 69. And the plaintiffs request that the defendants provide them with the duties they are owed under 26 U.S.C. § 7803(a)(3). *Id.* at 8, 10.

II. Analysis

On October 17, 2019, the defendants filed a motion to dismiss the plaintiffs’ “entire [claim] with prejudice under [*res judicata*.]” Defs.’ Mot. at 1. The defendants argue that “[the p]laintiffs alleged numerous similar claims [in *Johnson I* through *VI*] relating not only to their 2012 and 2013 tax returns,

105C also starts the two-year period to file a refund suit, which sets the outer time limit on Appeals consideration of the claim.

Gerald A. Kafka, *Choice of Forum in Federal Civil Tax Litigation*, in *How to Handle a Tax Controversy at the IRS and in Court: From Administrative Audit Through Litigation* 283, 301–02 (American Legal Institute ed., 2010). “The [Letter 105C] states the reason for the IRS’s decision, the date of the decision, and the tax year or period for which the claim is denied.” *Letter 105 C, Claim Disallowed*, Taxpayer Advocate Service, <http://www.taxpayeradvocate.irs.gov/notices/letter-105-c/> (last updated June 8, 2022).

but also to their tax returns spanning all of their 2008 to 2015 tax years.” Defendants’ Memorandum of Law in Support of Motion to Dismiss the Complaint (“Defs.’ Mem.”) at 1, ECF No. 6-1.

The defendants contend that *res judicata* is satisfied since (1) the “[p]laintiffs’ single ‘claim[]’ [] underlies all eight of their lawsuits . . . is that the wages and other income are not subject to federal income tax, with the result that the IRS’ tax and penalty assessments against them are invalid[;]” (2) “all of the [p]laintiffs’ lawsuits have been before [c]ourts of competent jurisdiction[;]” (3) “all eight lawsuits have been between the plaintiffs and the United States, or its federal government privies[;]” and (4) the “[p]laintiffs’ claims alleged in *Johnson I* to *VI* were decided on their merits.” *Id.* at 6–7.

For the first element, the defendants rely on the same logic from *Johnson VII*.³ *Id.* at 2. There, the defendants argued that *res judicata* bars the plaintiffs’ claims because they “allege[] the same factual particulars and legal claims” relating to their 2012 and 2013 tax returns that they alleged in *Johnson II* through *VII*. Defs.’ Mem. at 4. Here, they allege that the same facts and legal issues are: (1) the plaintiffs, in *Johnson VI*, “previously alleged [the same] APA claim . . . that the IRS had improperly determined that their filed tax returns were ‘frivolous[;]’” (2) “[the p]laintiffs, in *Johnson II* and *III*, invoked the Due Process Clause[;]” (3) the plaintiffs, in *Johnson II* and *III*, “relied upon 26 U.S.C. § 6402(l)[;]” (4) the plaintiffs, in *Johnson II* and *III*, “alleged that the [defendant’s] issuing LTR 105C supporting their legal claims[;]” and (5) the plaintiffs, in *Johnson II*, “alleged that they are entitled to refunds of \$32,137 and \$34,123, respectively, for their 2012 and 2013 tax years.” *Id.* at 4–5.

On November 20, 2019, the plaintiffs responded in opposition to the defendants’ motion to dismiss. *See* Pls.’ Mem. at 1. The plaintiffs concede that most of the *Johnson* cases have involved the same parties but argue that: (1) these cases do not involve the same claim or cause of action; (2) neither the United States Tax Court nor the United States District Court for the Western District of Missouri is a court of competent jurisdiction; and (3) the “[d]efendants have failed to show any relevant previous determinations that reach a finding of fact[] or a finding of law that bind the parties and preclude [the] plaintiffs’ current claims[;]” *Id.* at 11–23 (emphasis removed).

The plaintiffs argue that this case does not involve the same claim or cause of action because (i) “[t]he current claims in this action could not have been anticipated[;]” *id.* at 11, (ii) “[t]here is no prior claim with the same nucleus of facts[;]” *id.* at 12 (emphasis removed), and (iii) “[t]here is no single underlying universal claim as described by the defendants[;]” *id.* at 18.

The plaintiffs assert that the current claims were not anticipated because “the ‘facts’ of [the] LTR[] 105C . . . [did not] exist[] during prior actions and were not ripe until [the] defendants failed to produce the Appeal[s] Case Memos and the statute of limitations . . . were set to expire.” *Id.* at 12.

³ Notably, as mentioned earlier, Your Honor denied the defendants’ motion to dismiss in *Johnson VII*. Mem. Op. at 9, *Johnson VII*, No. 99-cv-9999 (RBW).

Moreover, the plaintiffs argue that no case shares the same nucleus of facts since (1) “this current action is based on a new set of facts[,]” (2) “[t]his current action does not challenge [the] defendants’ use of the word ‘frivolous’” but instead “challenge[s] the sufficiency of the [notice] on [f]orms LTR[]105C as inadequate and improper under the provision of 26 U.S.C. § 6402(l)[.]” (3) the “plaintiffs do not ask for money in this action[,]” and (4) “[n]either 28 U.S.C. § 1346(a)(1) or 26 U.S.C. § 7422 expressly or impliedly forbid the relief [*i.e.*, remand & duties owed] [that the] plaintiffs seek[.]” *Id.* at 13–14.

For the reasons explained below, I recommend denying the defendants’ motion to dismiss and consolidating *Johnson VII* and *IX* with this case.

A. Whether Res Judicata Bars the Plaintiffs’ Claims

Res judicata does not bar the plaintiffs’ claims because this case does not “share the same ‘nucleus of facts[.]’” as any previously litigated *Johnson* cases. *Drake*, 291 F.3d at 66 (citation omitted). In this case, the nucleus of facts—“the transaction caus[ing] [the plaintiff’s] injury[.]” *Polsby*, 201 F. Supp. 2d at 51 (citation omitted)—is the plaintiffs’ defendant-issued LTR 105C. Both LTR 105Cs mention that the plaintiffs “based [their] claim on a frivolous position that isn’t supported by law[.]” Compl. at ¶¶ 30, 57 (internal quotation marks omitted). The plaintiffs argue that these are unreasoned opinions supported by inadequate law and fact. *Id.* at ¶¶ 23, 37–39, 51, 64–66. This alleged inadequacy amounts to a procedural due process violation. *See id.* at ¶¶ 40–41, 67–68. Accordingly, if the defendants issued LTR 105Cs with adequate explanations, the plaintiffs could not raise the alleged injury.

Conversely, the previously litigated *Johnson* cases involve other “central events[.]” *Drake*, 291 F.3d at 66. In *Johnson I*, the plaintiffs’ alleged injury involved a defendant-issued Notice of Deficiency. *Johnson I*, 999 F. Appx. at 999. In *Johnson II* and *III*, though, the plaintiffs’ alleged injury did stem from a defendant-issued LTR 105C. But that LTR 105C was for the 2008 tax year—not the 2012 and 2013 tax years relevant to this case. Amended Complaint ¶ 156, *Johnson II*, No. 99-cv-999 (DGK), ECF No. 5; Am. Compl. ¶ 28, *Johnson III*, No. 99-cv-999 (DGK).

In *Johnson IV*, the defendants allegedly wrongfully withheld various tax documents, like TXMODA transcripts. Compl. at 8–9, *Johnson IV*, No. 99-cv-999 (RBW). In *Johnson V* and *VI*, the defendants allegedly injured the plaintiff by (1) wrongfully withholding tax documents, (2) improperly executing collection activities, (3) refusing to amend tax returns, (4) wrongfully promulgating 26 C.F.R. 301.7433-1(b)(2), and (5) providing inadequate notice for a rule. *Johnson VI*, slip op. at 6. Finally, in *Johnson VII*, the plaintiffs’ alleged injury arose after the defendants withheld Appeals Case Memos that the plaintiffs requested under FOIA. Mem. Op. at 1, *Johnson VII*, No. 99-cv-999 (RBW).

Although the facts of *Johnson I* to *VI* all relate to the plaintiffs’ tax returns, these cases “are based on a different nucleus of facts than [] those advanced in [this case.]” *Drake*, 291 F.3d at 66.

Furthermore, though some of these facts may be related in time, *e.g.*, concerning the 2012 and 2013 tax returns, the subject matter of these cases is not “substantially the same.” *Kissi*, 627 F. Supp. 2d at 33.

Moreover, the plaintiffs’ claims are “[un]related . . . in motivation[.]” *RSM Prod. Corp.*, 800 F. Supp. 2d at 190–91. The plaintiffs want an adequate explanation of why the defendants determined their tax returns to be frivolous. *See* Pls’ Mem. (“[The p]laintiffs are unable to challenge [the] defendants’ disallowance because [the] defendants’ have failed to provide proper [notice] of the law upon which they depend and the facts upon which they depend in issuing the disallowances on [the] LTR[]105C[s.]”). They seek an injunction ordering the defendants to provide an LTR 105C adequately explaining why their tax returns were disallowed. *See* Compl. at 8, 10. Conversely, in *Johnson I* to *VI*, the plaintiffs’ sued to retrieve allegedly improperly withheld documents, receive proper rulemaking notice, and challenge a rule’s validity. The relief sought in those cases was: erasing their IRS deficiency, receiving damages, enjoining the defendants to release certain documents, or enjoining the defendants from enforcing certain rules. *See* Order at 1, *Johnson I*, No. 9999-99; *Johnson II*, 2015 WL 9999999, at *1; *Johnson III*, 2018 WL 9999999, at *1; Order at 1 (Aug. 22, 2017), *Johnson IV*, No. 99-cv-999; *Johnson VI*, slip op. at 6. Here, the plaintiffs’ motivation for filing this claim is substantially different.

Even in *Johnson II* and *III*, where the facts similarly involved an LTR 105C, the tax years are not the same, rendering the claims “[un]related in time[.] . . . or origin.” *RSM Prod. Corp.*, 800 F. Supp. 2d at 190–91. Furthermore, in this case, the LTR 105C notices were issued by the defendants in March 2017, Compl. ¶¶ 23, 51. This was after the plaintiffs filed their first five lawsuits. Therefore, because the “central event underlying” the plaintiffs’ claim “had not yet taken place at the time” of the prior litigation, these cases do not “share the same ‘nucleus of facts.’” *Drake*, 291 F.3d at 66 (citation omitted).

The defendants also argue that the plaintiffs could have anticipated the IRS’s determination. *See* Defs.’ Reply at 3. But this is unpersuasive considering the legal purpose of the LTR 105C—it serves as legal notice that the IRS is disallowing a person’s tax return and that the statutory limitation period has begun. Without the LTR 105C, the plaintiffs could not have appealed this “anticipated” decision.

Furthermore, though the facts of *Johnson VII* and this case may be “related in . . . origin, and motivation[.]” *Johnson VII* has not reached a final determination on the merits. *RSM Prod. Corp.*, 800 F. Supp. 2d at 190–91. In *Johnson VII*, this Court denied the defendants’ motion to dismiss for failure to state a claim, keeping litigation alive rather than reaching a final decision. Mem. Op. at 9, *Johnson VII*, No. 99-cv-999 (RBW). Additionally, in *Johnson VII*, this Court dismissed the plaintiffs’ claim “against the United States[] [and] Adams[.]” who are the defendants in this case. *Id.* at 10. Therefore, these cases

involve different defendants. Thus, because this Court has not finally decided *Johnson VII* and this case involves different defendants, *res judicata* does not bar the plaintiffs' claims.⁴

Finally, though some of the facts of *Johnson IX* are "related in . . . origin" to the facts of this case—namely, the same 2012 and 2013 LTR 105Cs—that case has also not been finally decided. *RSM Prod. Corp.*, 800 F. Supp. 2d at 190–91. Thus, *res judicata* does not bar the plaintiffs' claims.

"[B]ecause it appears that the defendant[s] ha[ve] not established . . . [all] elements, the plaintiff[s]' are not barred by *res judicata*." *Stanford v. Potomac Elec. Power Co.*, 394 F. Supp. 2d 81, 88 (D.D.C. 2005) (Walton, J.).⁵

Accordingly, I recommend concluding that *res judicata* does not bar the plaintiffs' claims. This Court should deny the defendants' motion to dismiss.

B. Consolidation of this Case with Other Cases

i. *Johnson VII*

Although *res judicata* does not bar this case, this Court should consolidate *Johnson VII* with this case because both cases involve actions arising from the "same series of events or facts." *Hanson*, 257 F.R.D. at 21. In *Johnson VII*, the plaintiffs allege that the defendants wrongfully withheld their Appeals Case Memos, which are necessary to learn why their LTR 105C appeal was denied. *See* Compl. ¶ 457 ("The [plaintiffs] . . . need a copy of [the d]efendant[s]' Appeal[s] Case Memo to prepare to challenge [the d]efendant[s]' disallowance in [this Court] . . ."). In this case, the plaintiffs allege that the defendant-issued LTR 105C provided inadequate notice of law and fact. And like in *Johnson VII*, the plaintiffs seek adequate notice to learn why their tax returns were disallowed.

⁴ Although not adopted by the D.C. Circuit and not argued by the defendants, *Johnson VII* would also not trigger what is called "claim-splitting." *See Clayton v. District of Columbia*, 36 F. Supp. 3d 91, 94 (D.D.C. 2014); *Hudson v. Am. Fed'n of Gov't Emps.*, 308 F. Supp. 3d 388, 394 (D.D.C. 2018). A plaintiff engages in claim-splitting when they "seek[] 'to maintain two actions on the same subject in the same court, against the same defendant at the same time.'" *Clayton*, 36 F. Supp. 3d at 94 (quoting *Katz v. Gerardi*, 655 F.3d 1212, 1219 (10th Cir. 2011)). To determine whether a plaintiff has engaged in claim-splitting, the court must determine "whether, assuming the first suit was already final, the second suit would be precluded under *res judicata* analysis." *Id.* at 94 (emphasis added) (internal quotation marks omitted) (quoting *Katz*, 655 F.3d at 1219). Here, claim-splitting would not apply because the United States and Adams are no longer defendants in *Johnson VII*.

⁵ Furthermore, it is worth noting that in the *Johnson* cases where this Court or another court dismissed the plaintiffs' claims for lack of subject matter jurisdiction, the D.C. Circuit has long held that "[a] dismissal for lack of subject matter jurisdiction is not a judgment 'on the merits[,]'" thereby not triggering *res judicata*. *Jackson v. Office of the Mayor of D.C.*, 911 F.3d 1167, 1171 (D.C. Cir. 2018) (citation omitted); *see also Kasap v. Folger Nolan Fleming & Douglas, Inc.*, 166 F.3d 1243, 1248 (D.C. Cir. 1999) ("[D]ismissals for lack of jurisdiction are not decisions on the merits and therefore have no *res judicata* effect . . ."). Therefore, the judgments in *Johnson II* and *III*, and parts of *Johnson IV*, *V*, and *VI*, are not "decisions on the merit" and have no preclusive effect on this case. *Jackson*, 911 F.3d at 1171. However, the judgments granting motions to dismiss for failure to state a claim are preclusive because "dismissal[s] for failure to state a claim [] constitute final judgments on the merits." *Ashbourne v. Hansberry*, 894 F.3d 298, 302 (D.C. Cir. 2018).

Furthermore, both cases rely on the “same series of facts”—the 2012 and 2013 LTR 105Cs. *Hanson*, 257 F.R.D. at 21. Without the LTR 105Cs, the plaintiffs could not file either claim because (1) their procedural due process claim would be baseless, and (2) the Appeals Case Memos would not exist. Plus, if the defendants now provide adequate LTR 105Cs, both cases would be moot because all the plaintiffs seek is a sufficient explanation of why their 2012 and 2013 tax returns were denied.

Moreover, consolidating *Johnson VII* with this case avoids the “expense of proceeding with separate lawsuits[.]” *Nat’l Ass’n of Mortg. Brokers*, 770 F. Supp. 2d at 286. After filing *Johnson IX*, their ninth lawsuit in under seven years, see Compl. at 1, *Johnson IX*, No. 99-cv-9999 (RBW), there is no sign of when this litigation spree will end. This will cause unnecessary stress on this Court’s docket and waste government taxpayer dollars. And consolidation will minimize the “risk of prejudice and confusion” because both cases are at the same procedural stage, within the same jurisdiction, and before Your Honor. *Nat’l Ass’n of Mortg. Brokers*, 770 F. Supp. 2d at 286.

In sum, consolidating these cases will make litigation more convenient. The presence of different defendants does not preclude consolidation, as “it is not a prerequisite for the parties to be identical[.]” *Id.* Consolidation promotes consistent opinions, more timely adjudication of the plaintiffs’ claims, and judicial economy. Considering the benefits of consolidation against the minimal “risk of prejudice and confusion[.]” *id.*, this Court should consolidate *Johnson VII* with this case under Rule 42(a).⁶

ii. *Johnson IX*

This Court should also consolidate *Johnson IX* with this case because both involve issues arising from the “same series of events or facts.” *Hanson*, 257 F.R.D. at 21. In *Johnson IX*, the plaintiffs allege identical legal questions based on slightly different facts. Specifically, whether the 2011, 2013, 2014, and 2015 LTR 105Cs fail to provide “meaningful [notice] of the issues of fact [or law]” as required “under . . . § 6402(l)[,] depriv[ing] plaintiffs of . . . due process[.]” Compl. ¶ 715–16, *Johnson IX*, No. 99-cv-999 (RBW), ECF No. 1. And in this case, the issue is whether the 2012 and 2013 LTR 105Cs inadequately explain their disallowance as required under § 6402(l) and the Due Process Clause. Both cases also demand the same relief: remanding the LTR 105C adjudications for proper processing. *Id.* ¶ 720.

Considering the significant “overlap in issues presented by both [cases,]” this Court should consolidate *Johnson IX* with this case. *Nat’l Ass’n of Mortg. Brokers*, 770 F. Supp. 2d at 286. Merely

⁶ Though *res judicata* and consolidation are not necessarily harmonious motions in the eyes of the parties, *i.e.*, the plaintiff may request consolidation while the defendant argues for dismissal under *res judicata* (or a similar doctrine, like claim-splitting), see *Clayton*, 36 F. Supp. 3d at 93, these tools are just a few of the court’s arsenal, *id.* at 94 (“[A] district court is not required to consolidate actions; the court can generally decide instead to dismiss a duplicative and later-filed action, stay a later-filed action pending resolution of the previously filed action, or enjoin the parties from proceeding with a later-field action.” (citation omitted) (internal quotation marks omitted)).

because *Johnson IX* does not raise a Fifth Amendment challenge is not dispositive because both cases involve alleged violations of § 6402(l) and the Due Process Clause.

Also, both cases name the United States and Mr. James P. Adams as defendants. Just because other *Johnson IX* defendants are not named in this case does not preclude consolidation, as “cases may be consolidated even where certain defendants are named in only one of the [c]omplaints[.]” *Nat’l Ass’n of Mortg. Brokers*, 770 F. Supp. 2d at 286. Moreover, deciding to consolidate these two cases will not prejudice the plaintiffs but will instead avoid the “risk of inconsistent rulings” and lower the “expense of proceeding[s.]” *Id.* Accordingly, this Court should consolidate *Johnson IX* with this case.

FINAL RECOMMENDATION:

Res judicata does not bar the plaintiffs’ claim because none of their previously or concurrently litigated cases satisfy all the doctrine’s elements. Thus, I recommend denying the defendant’s motion to dismiss.

But given the similarity of Johnson VII and IX to this case, I recommend consolidating these cases sua sponte. This Court did the same by consolidating Johnson IV, V, and VI.

Applicant Details

First Name **Jacinda**
 Middle Initial **D**
 Last Name **Rivas**
 Citizenship Status **U. S. Citizen**
 Email Address jdr345@cornell.edu

Address

Address
Street
2035 North Neva Avenue
City
Chicago
State/Territory
Illinois
Zip
60707
Country
United States

Contact Phone Number **7733830906**

Applicant Education

BA/BS From **University of Kentucky**
 Date of BA/BS **May 2019**
 JD/LLB From **Cornell Law School**
<http://www.lawschool.cornell.edu>
 Date of JD/LLB **May 13, 2023**
 Class Rank **I am not ranked**
 Law Review/Journal **Yes**
 Journal(s) **Journal of Law and Public Policy**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Langfan Family First-Year Moot Court Competition**
Francis P. Cuccia Family Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience**Professional Organization**

Organizations	Just the Beginning Foundation
---------------	--------------------------------------

Recommenders

Whorton, Amanda
awhorton@cornell.edu
(607) 255-3504
Nobles, Katrina
kn64@cornell.edu
Brundige, Elizabeth
eb456@cornell.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jacinda Rivas
2035 N. Neva
Chicago, IL. 60707

The Honorable Judge Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

June 11, 2023

Dear Judge Walker,

I am a recent graduate of Cornell Law School. I am writing to apply for a clerkship in your chambers for the next available term.

I am confident that I could contribute meaningfully to the Court's work. As an extern for Judge Thomas M. Durkin in U.S. District Court for the Northern District of Illinois, I wrote thorough and precise bench memoranda. In addition to my work experience, I have extensive experience in legal writing through my extracurricular activities and course work. I served as the Membership Director for the Journal of Law and Public Policy. In addition, I currently serve as the Teaching Assistant for the Principles of American Legal Writing course, which involves mentoring L.L.M. students on their legal writing. I am also a senior member of Cornell's Gender Justice Clinic, where I am continuing to develop my research and writing skills by drafting briefs for the Inter-American Commission on Human Rights. These experiences have trained me to think and write clearly about complex legal questions, which would enable me to be an effective judicial clerk.

A resume, unofficial law school transcript, and writing sample are enclosed. Letters of recommendation from Cornell Law School professors Brundige, Nobles and Whorton will follow.

Please let me know if I can provide you with any additional materials to assist you in your decision. Thank you in advance for your consideration.

Sincerely,



Jacinda Rivas

JACINDA RIVAS

773-383-0906 – jdr345@cornell.edu – www.linkedin.com/in/jacinda-rivas

EDUCATION

Cornell Law School – Ithaca, NY.

Juris Doctorate – May 2023

GPA: 3.442

Honors: Dean's List, Spring 2022, Fall 2022 & Spring 2023

Journal of Law and Public Policy, Membership Director

Activities: Principles of American Legal Writing, Teaching Assistant to Professor Amanda Whorton

Latin American Law Students Association, Academic Chair

Cornell Law School Faculty Committee, Diversity Chair

2021 Francis P. Cuccia Family Moot Court Competition, Octo-finalist

University of Kentucky – Lexington, KY.

B.A. in Political Science, B.A. in Environment and Sustainability Studies, and B.A. in Philosophy – May 2019

Honors: Summa Cum Laude

University of Kentucky Urban Debate Scholarship, Recipient

Activities: Intercollegiate Debate Team, President

Political Science Department, Research Assistant to Professor Michael A. Zilis

Student Leadership Council, Forensics Representative

PROFESSIONAL EXPERIENCE

Lead Complainant's Code Counselor

Cornell University – Ithaca, NY. – April 2021 – Present

- Advised clients regarding Policy 6.4 and the Office of Institutional Equity and Title IX processes.
- Prepared for direct and cross-examination of complainants, defendants, and witnesses at a Title IX hearing.
- Drafted and reviewed documents pertaining to investigations and hearings.
- Interviewed clients to understand their experiences and identify potential witnesses and evidence.

Summer Associate

Blank Rome – New York, NY. – May 2022 – July 2022

- Researched statutes, case law, and regulations to analyze litigation, maritime, and environmental issues.
- Composed memorandums explaining the best arguments and likely outcomes of motions and settlements.
- Communicated my research findings and legal analyses to partners and senior associates to inform their next steps.
- Conducted research and analyzed expert testimony to ensure they provided consistent statements.

Judicial Extern to the Honorable Thomas M. Durkin

U.S. District Court – Northern District of Illinois – Chicago, IL. – June 2021 – August 2021

- Drafted opinions and legal memoranda, including a motion to dismiss for an employment discrimination matter.
- Conducted legal research regarding criminal, civil, and constitutional matters on the docket.
- Observed and discussed the daily court proceedings with Judge Durkin and the law clerks.
- Attended pre-trial hearings and trials to familiarize myself with courtroom procedure.

Paralegal

Ben Crump Law Firm – Chicago, IL. – June 2019 – July 2020

- Interviewed potential clients per day to evaluate the firm's ability to handle the case.
- Assembled legal documents in preparation for filing on behalf of a supervising attorney.
- Organized and updated the client database to ensure all case developments are documented.
- Corresponded with news outlets and other media to fulfill requests regarding high profile cases.

INTERESTS & HOBBIES

- Chicago Cubs
- Coaching Debate
- Cooking
- Spin Classes

Cornell Law School - Grade Report - 06/02/2023

Jacinda D Rivas

JD, Class of 2023

Course	Title	Instructor(s)	Credits	Grade	
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Fall 2020 (8/25/2020 - 11/24/2020)

LAW 5001.5	Civil Procedure	Rachlinski	3.0	B	
LAW 5021.3	Constitutional Law	Dorf	4.0	B	
LAW 5041.2	Contracts	Anker	4.0	B	
LAW 5081.4	Lawyering	Fongyee Whelan	2.0	B+	
LAW 5151.2	Torts	Heise	3.0	B+	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	16.0	16.0	3.1031
Cumulative	16.0	16.0	16.0	16.0	16.0	16.0	3.1031

Spring 2021 (2/2/2021 - 5/7/2021)

LAW 5001.1	Civil Procedure	Clermont	3.0	B+	
LAW 5061.1	Criminal Law	Corn	3.0	C	
LAW 5081.4	Lawyering	Fongyee Whelan	2.0	B+	
LAW 5121.2	Property	Sherwin	4.0	B-	
LAW 6011.1	Administrative Law	Rogers	3.0	B-	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	15.0	15.0	2.7560
Cumulative	31.0	31.0	31.0	31.0	31.0	31.0	2.9351

Fall 2021 (8/24/2021 - 12/3/2021)

LAW 6101.1	Antitrust Law	Hay	3.0	B+	
LAW 6131.1	Business Organizations	Hockett	3.0	B+	
LAW 6641.1	Professional Responsibility	Wendel	3.0	B+	
LAW 7871.301	Labor Law Clinic	Cornell	4.0	A-	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	13.0	13.0	13.0	13.0	13.0	13.0	3.4346
Cumulative	44.0	44.0	44.0	44.0	44.0	44.0	3.0827

Spring 2022 (1/25/2022 - 5/2/2022)

LAW 6027.1	Campus Mediation Practicum	Nobles	4.0	A	
LAW 6301.202	Directed Reading	Rana	2.0	SX	
LAW 6401.1	Evidence	Weyble	4.0	S	
LAW 6861.606	Supervised Teaching	Whorton	2.0	SX	
LAW 7411.101	Law and Higher Education	Guard	3.0	A	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	7.0	7.0	4.0000
Cumulative	59.0	59.0	59.0	59.0	51.0	51.0	3.2086

^ Dean's List

Fall 2022 (8/22/2022 - 12/16/2022)

LAW 6029.101	Campus Mediation Practicum II	Nobles	4.0	A+	
LAW 6861.610	Supervised Teaching	Whorton	2.0	SX	
LAW 7914.301	Gender Justice Clinic	Brundige/Lee	6.0	A	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	12.0	12.0	12.0	12.0	10.0	10.0	4.1320
Cumulative	71.0	71.0	71.0	71.0	61.0	61.0	3.3600

^ Dean's List

Spring 2023 (1/23/2023 - 5/16/2023)

LAW 6265.1	Critical Race Theory	Young	3.0	A			
LAW 6431.1	Federal Courts	Gardner	4.0	S			
LAW 6437.1	Federal Practice and Procedure	Nathan	1.0	SX			
LAW 6861.604	Supervised Teaching	Whorton	2.0	SX			
LAW 7915.301	Gender Justice Clinic II	Brundige/Lee	6.0	A			
	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	9.0	9.0	4.0000
Cumulative	87.0	87.0	87.0	87.0	70.0	70.0	3.4422

^ Dean's List

Total Hours Earned: 87

Received JD on 05/28/2023

Official Transcript



Name: Rivas, Jacinda Deserae
 Student SSN: *****4421
 Student Number: 12089541
 Print Date: 12/22/2020 Page Number: 1 of 2

Issued to:

JACINDA D. RIVAS

Requested by: Jacinda Deserae Rivas

Undergraduate Academic Record

SCHOOLS ATTENDED

Secondary Schools:
 Whitney Young High School
 Higher Education Institutions:
 AP Credit Awarded - Univ of KY
 AP Credit Awarded - Univ of KY

01/2015 - 12/2015
 01/2014 - 12/2014

DEGREES AWARDED

Bachelor of Arts

05/03/2019

College of Arts & Sciences
 University Honors: Summa Cum Laude
 Major: Political Science
 Environmental & Sustainability Studies
 Option: Economics
 Departmental Honors

Cum GPA: 3.833

Bachelor of Arts

05/03/2019

College of Arts & Sciences
 University Honors: Summa Cum Laude
 Major: Philosophy
 Cum GPA: 3.833

Transfer Credit Applied to 2015 Fall Semester

AP Credit Awarded - Univ of KY 01/2014 - 12/2014
 ECO MICR Economics: Microeconomic 3.00 ECO 201
 ECO MACR Economics: Macroeconomic 3.00 ECO 202
 GOV US Government And Politics: 3.00 PS 101
 GOV COMP Government And Politics: 3.00 PS 210
 ENV SCI Environmental Science 3.00 EES 110
 Total 15.00

2015 Fall Semester

Program:
 College of Arts & Sciences
 Bachelor of Arts
 Major: Political Science

CRS NUM	COURSE TITLE	GRADE	HOURS	QPTS
ICT 200	INFORMATION LITERACY & CRITICAL THINKING	A	3.0	12.00
UKC 180	US CITIZ: CIVIC ENGAGEMENT 101	A	3.0	12.00
WRD 110	COMP & COMM I	A	3.0	12.00
SPA 203	HIGH INTERMED SPANISH	B	3.0	9.00
PS 235	WORLD POLITICS	A	3.0	12.00
BIO 102	HUMAN ECOLOGY	A	3.0	12.00
	AHRS EHRS QHRS QPTS GPA			
Semester	18.0 18.0 18.0		69.00	3.833
Cumulative	33.0 33.0 18.0		69.00	3.833
Status	Dean's List			

2016 Spring Semester

Program:
 College of Arts & Sciences
 Bachelor of Arts
 Major: Political Science
 Major: Philosophy

CRS NUM	COURSE TITLE	GRADE	HOURS	QPTS
PHI 120	INTRODUCTORY LOGIC	A	3.0	12.00
EES 170	BLUE PLANET: INTRO TO OCEANOGRAPHY	A	3.0	12.00
PS 372	INTRO POLITICAL ANALYSIS	B	3.0	9.00
GWS 200	SEX AND POWER	B	3.0	9.00
STA 210	INTRO TO STATISTICAL REASONING	A	3.0	12.00
WRD 111	COMP & COMM II	A	3.0	12.00
	AHRS EHRS QHRS QPTS GPA			
Semester	18.0 18.0 18.0		66.00	3.667
Cumulative	51.0 51.0 36.0		135.00	3.750
Status	Dean's List			

2016 Fall Semester

CRS NUM	COURSE TITLE	GRADE	HOURS	QPTS
PS 360	POLITICS OF LAW AND COURTS	A	3.0	12.00
PHI 350	METAPHYSICS AND EPISTEMOLOGY	A	3.0	12.00
	Graduation Comp and Comm Requirement			
PS 472G	POL CAMPAIGNS & ELECTION	B	3.0	9.00
PHI 270	HIS PHI II: RENAISSANCE TO PRESENT ERA	A	3.0	12.00
PHI 260	HIS PHI IGRK BEGINNINGS TO THE MID AGES	W	3.0	0.00
	AHRS EHRS QHRS QPTS GPA			
Semester	15.0 12.0 12.0		45.00	3.750
Cumulative	66.0 63.0 48.0		180.00	3.750
Status	Dean's List			

2017 Spring Semester

CRS NUM	COURSE TITLE	GRADE	HOURS	QPTS
PHI 260	HIS PHI IGRK BEGINNINGS TO THE MID AGES	B	3.0	9.00
PS 465G	CONSTITUTIONAL LAW	A	3.0	12.00
PHI 310	PHI OF HUMAN NATURE	A	3.0	12.00
PHI 337	INTRO-LEGAL PHILOSOPHY	A	3.0	12.00
PS 492	SEM POLITICAL SCIENCE: GENDER & POLITICS	A	3.0	12.00
PS 391	SP TOP IN PS: FILM AND POLITICS	A	3.0	12.00
	AHRS EHRS QHRS QPTS GPA			
Semester	18.0 18.0 18.0		69.00	3.833
Cumulative	84.0 81.0 66.0		249.00	3.773
Status	Dean's List			

2017 Fall Semester

CRS NUM	COURSE TITLE	GRADE	HOURS	QPTS
PHI 305	HEALTH CARE ETHICS	A	3.0	12.00
PS 399	INTERNSHIP IN GOVERNMENT	P	3.0	0.00
	Pass Fail Grade Scale			
PHI 335	THE INDIVIDUAL & SOCIETY	A	3.0	12.00
PS 461G	CIVIL LIBERTIES	A	3.0	12.00
PHI 514	AMERICAN PHILOSOPHY	A	3.0	12.00
	AHRS EHRS QHRS QPTS GPA			
Semester	15.0 15.0 12.0		48.00	4.000
Cumulative	99.0 96.0 78.0		297.00	3.808
Status	Dean's List			

***** No Further Entries This Page *****

Continued on Page 2



Kim K. Taylor

Kim K. Taylor
 University Registrar

Official Transcript



Name: Rivas, Jacinda Deserae
 Student SSN: *****4421
 Student Number: 12089541
 Print Date: 12/22/2020 Page Number: 2 of 2

2018 Spring Semester

Program:
 College of Arts & Sciences
 Bachelor of Arts
 Major: Political Science
 Bachelor of Arts
 Major: Philosophy

CRS NUM	COURSE TITLE	GRADE	HOURS	QPTS
WRD 304	WRITING IN THE SOCIAL SCIENCES	A	3.0	12.00
GWS 410	Graduation Comp and Comm Requirement INTRODUCTION TO QUEER THEORY	A	3.0	12.00
PHI 540	FEMINIST PHILOSOPHY	A	3.0	12.00
PHI 320	SYMBOLIC LOGIC I	A	3.0	12.00
PHI 575	PHILOSOPHY OF MIND	B	3.0	9.00
	AHRS	EHRS	QHRS	QPTS
Semester	15.0	15.0	15.0	57.00
Cumulative	114.0	111.0	93.0	354.00
Status	Dean's List			

2018 Fall Semester

Program:
 College of Arts & Sciences
 Bachelor of Arts
 Major: Political Science
 Major: Environmental & Sustainability Studies
 Option: Economics
 Bachelor of Arts
 Major: Philosophy

CRS NUM	COURSE TITLE	GRADE	HOURS	QPTS
ENS 201	ENV. & SUST. STUD. I: HUM. & SOC. SCI.	A	3.0	12.00
PHI 336	ENVIRONMENTAL ETHICS	A	3.0	12.00
PHI 537	PHILOSOPHY OF LAW	A	3.0	12.00
PHI 565	PHILOSOPHY OF LANGUAGE	A	3.0	12.00
PS 399	INTERNSHIP IN GOVERNMENT	P	3.0	0.00
	Pass Fail Grade Scale			
ENS 300	SPECIAL TOPICS: GLOBAL ENERGY FUTURES	B	3.0	9.00
	AHRS	EHRS	QHRS	QPTS
Semester	18.0	18.0	15.0	57.00
Cumulative	132.0	129.0	108.0	411.00
Status	Dean's List			

2019 Spring Semester

CRS NUM	COURSE TITLE	GRADE	HOURS	QPTS
SOC 101	INTRO TO SOCIOLOGY	A	3.0	12.00
ENS 400	SENIOR SEMINAR: SUSTAINABILITY IN ACTION	A	3.0	12.00
	Graduation Comp and Comm Requirement			
ANT 375	ECOLOGY AND SOC PRACTICE	A	3.0	12.00
AEC 326	PRIN ENVIRONMENTAL LAW	A	3.0	12.00
ENS 202	ENV. & SUST. STUD. I: NAT. SCI. & POLICY	A	3.0	12.00
WRD 310	WRITING IN THE NATURAL SCIENCES	A	3.0	12.00
	Graduation Comp and Comm Requirement			
	AHRS	EHRS	QHRS	QPTS
Semester	18.0	18.0	18.0	72.00
Cumulative	150.0	147.0	126.0	483.00
Status	Dean's List			

Degree Requirements Completed for Bachelor of Arts.
 Degree Requirements Completed for Bachelor of Arts.

*** End of Undergraduate Academic Record ***



Kim K. Taylor

Kim K. Taylor
 University Registrar

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to enthusiastically recommend Jacinda Rivas for a clerkship position in your chambers. I believe she will make an excellent clerk due to her collaborative attitude, strong writing and editing skills, and personal interests.

I have known Jacinda for approximately one year as a Teaching Assistant in my Principles of American Legal Writing course for the Spring 2022, Fall 2022, and Spring 2023 semesters at Cornell Law School. In this course, I teach international LL.M. students how to draft certain legal documents in the United States, including memos and legal briefs. In her role as a Teaching Assistant for me, Jacinda regularly counsels students on their legal writing, providing feedback and comments on student papers, and giving presentations on proper citation format.

Jacinda has extraordinary people skills—she is friendly with everyone she meets and is able to clearly and confidently communicate complex ideas, like American legal writing techniques. American legal writing can be a particularly challenging class for students from different countries, with a wide range of proficiency in English, and with an array of legal writing backgrounds. Jacinda's instruction and communication with students is clear and complete, and she is careful to tailor her advice to the needs of the specific student instead of just sharing the material in a way she learned as a J.D. student. Her friendly, good-humored nature would be an asset to your chambers.

In providing insightful comments on student writing, Jacinda is able to explain American legal writing expectations to students of various skill levels, and thus, improve her own outstanding legal writing through the experience. Additionally, she provides advice to students in a way that is accurate, while helping the students learn and feel positive about their growth as legal writers. Jacinda always meets any deadlines that I set, even in the midst of her own demanding course work.

I also have had the privilege of getting to know Jacinda on a personal level. Additionally, she enjoys coaching high school and college debate teams, which allows her to examine and research all sides of an issue before honing her argument.

I have asked Jacinda to come back as a Teaching Assistant for multiple semesters because of her strong writing, editing, and communication skills. She has been one of my best Teaching Assistants throughout my time as a professor, and I have no doubt that she would excel as a clerk in your chambers. I highly recommend her for a clerkship position. If you have further questions, please do not hesitate to contact me.

Sincerely,

Professor Amanda Whorton
Cornell Law School
awhorton@cornell.edu

Amanda Whorton - awhorton@cornell.edu - (607) 255-3504



February 3, 2023

**Letter of Recommendation
Jacinda Rivas**

Jacinda Rivas has asked me to write a letter of recommendation in support of her application for a judicial clerkship, and I am pleased to do so. I met Jacinda in the spring semester of 2022 when she was a student in a course I teach called The Campus Mediation Practicum (LAW 6027). Jacinda was an excellent student in the course, and consequently enrolled in the Campus Mediation Practicum II (LAW 6029) to continue her practice and research from the first course, as well as mentor students taking LAW 6027 in the fall of 2022.

The Campus Mediation Practicum is a course in which students both learn and apply mediation skills. In the first segment of the course, students are introduced to the guiding principles of mediation and restorative justice. In the second segment, students are assigned to mediate cases referred to the program regarding student conduct. Students who have already taken LAW 6027 work with new student mediators as mentors. Additionally, students research and explore various topics connected with campus mediation and restorative justice for their final project.

Over the course of the past 12 months, I got to know Jacinda quite well. She has been able to fully embrace the subject area, one which falls outside of the typical Law School curriculum. As part of that embrace, Jacinda has excelled through her ability to communicate clearly in real time, spur of the moment situations, such as reflecting, summarizing, and reframing party statements in mediation clearly, concisely and coherently. In addition, Jacinda is able to create party-specific verbal communication, meaning she is able to easily connect with a diverse population of students and staff. Her written communication skills also stood out among her classmates. In her second semester, Jacinda researched and wrote about the processes associated with the student code of conduct at Cornell University. She clearly articulated the advantages and disadvantages of the current system, while providing solutions for the shortcomings of the current system, particularly focusing on systemic issues, power dynamics, and a need for training and community partner development. Through this research, Jacinda was able to highlight her expertise and ability to effectively advocate through her familiarity with the judicial system as a complainant's codes counselor and mediator.

In my experience, Jacinda is hardworking and eager to step into every learning opportunity possible. she readily volunteered for any mediation fitting her schedule, as well as additional conversations with me and student mentors to increase her skill level. In addition to seeking out opportunities and feedback, Jacinda stepped into the role of mentor in her second semester with the Campus Mediation Practicum seamlessly. She was able to successfully work with undergraduate, graduate and other law students to improve their mediation skills, while continuing to improve her own. During the second semester with her classmates and our community partners, Jacinda was also able to clearly advocate for the enactment of diversity, equity and inclusion practices in both our understanding of the judicial system at Cornell, as well as the implementation of individual processes and practices.

Personally, I have enjoyed my experiences with Jacinda very much, and I am confident she will be a conscientious, capable, and hard-working clerk. I have no reservations whatsoever regarding her commitment to her studies and work within the legal realm. In sum, I recommend Jacinda for the judicial clerkship with enthusiasm.

Sincerely,

A handwritten signature in black ink that reads "Katrina G. Nobles".

Katrina G. Nobles
Director of Conflict Programs
Scheinman Institute on Conflict Resolution
ILR School
Cornell University

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write this letter in support of Jacinda Rivas's application for a judicial clerkship. Jacinda has been a member of my Gender Justice Clinic since August 2022. The Clinic involves a small number of students working closely with each other and the Clinic's faculty on projects that address gender-based violence and discrimination, and I have had the opportunity to get to know Jacinda well. Her thoughtfulness, diligence, strong research and writing skills, collaborative approach to teamwork, and commitment to public service make her an excellent clinic student and equip her well to serve as an effective judicial law clerk.

As a Clinic student, Jacinda has been part of a team that is developing a report on gaps and challenges in the Peace Corps' efforts to prevent and respond to sexual violence experienced by its volunteers. Jacinda and her teammates have researched Peace Corps policy, analyzed the qualitative and quantitative data that the clinic previously gathered through an online survey and interviews with former volunteers and are now using this research and analysis to draft an action-oriented report. Jacinda's work products, which have focused on the Peace Corps' response to reports of sexual violence or harassment, have been well written, reflecting thorough research and careful analysis. Jacinda has also diligently responded to feedback, reviewing comments and edits closely and responding to them effectively to ensure the success of the team's final draft. Jacinda has also contributed actively to strategic discussions about the future work that will follow publication of the report, from policy advocacy to possible impact litigation.

In her first semester in the Clinic, Jacinda also helped develop and deliver a public workshop entitled "Our Bodies, Their Laws: Reproductive Justice After the Fall of Roe." Part of a campus-wide collaboration, the workshop explored the implications of the Supreme Court's June 2022 decision in *Dobbs v. Jackson Whole Women's Health Organization* that ended the federal constitutional right to abortion. As a panelist, Jacinda provided an historical overview of abortion rights in the United States, reflected on the impact and implications of the *Dobbs* decision for communities that are likely to face disproportionate harm, and suggested ways students might advocate for themselves, their communities and those affected around the country in a post-*Dobbs* world. Jacinda engaged in extensive research and planning for this event, and she was an eloquent and thoughtful speaker, highlighting the importance of learning from history, building diverse and inclusive movements, and exploring creative approaches to advocacy. She was also an active and perceptive participant in the discussion that followed with the panelists and participants.

This semester, in addition to her work on the Peace Corps project, Jacinda is part of a team that is representing twenty-seven survivors of military sexual assault in two petitions to the Inter-American Commission on Human Rights, as well as engaging in related advocacy at the United Nations. This semester, the team's efforts are focused on preparing merits briefs and related supporting evidence to submit the Inter-American Commission. In her first week on the project, Jacinda and a teammate developed a thoughtful outline for the Clinic's brief, which will guide our research and writing. She has also played an important leadership role for her team, which includes several new clinic members. Jacinda has volunteered for important administrative and substantive tasks, helped organize the team's work to get it off to an effective start, and modeled diligence and a spirit of collaboration.

As a clinic member, Jacinda has been thoughtful, hard-working, and compassionate. Her valuable contributions to the Gender Justice Clinic is reflected in the strong A she received in the course after her first semester. This was mirrored by an extremely strong performance in her other classes and membership on the Dean's List in both fall and spring 2022. Jacinda was grappling with a serious family medical issue throughout her first year in law school, and this is reflected in her lower grades that year. Her continued engagement and success in law school since then demonstrates her resilience and perseverance in the face of challenges, qualities that will serve her well as a judicial law clerk.

This engagement has extended beyond Jacinda's courses and clinical experiences. Jacinda is Cornell University's Lead Complainant's Code Counselor, overseeing and participating on a team of law students who provide advocacy and case support to individuals who experienced violations of Cornell's Student Code of Conduct or Policy 6.4, including sexual violence, harassment, and gender discrimination. She has been an editor and membership director of the *Journal of Law and Public Policy*; a teaching assistant for Principles of American Legal Writing, a course for LLM students; Academic Chair of the Latin American Law Students Association; and student representative to the Cornell Law School Faculty Committee on Diversity. In her law school summers, Jacinda served as a summer associate at Blank Rome in New York and as a judicial extern to the Honorable Thomas Durkin of the U.S. District Court for the Northern District of Illinois.

Jacinda's dedication, determination, strong research and writing skills, collaborative leadership style, and commitment to public service make her an excellent candidate for a clerkship position. I recommend her enthusiastically. Please do not hesitate to contact me should you need any additional information.

Sincerely,

Elizabeth Brundige

Elizabeth Brundige - eb456@cornell.edu

Clinical Professor of Law
Cornell Law School

Elizabeth Brundige - eb456@cornell.edu

JACINDA RIVAS

773-383-0906 – jdr345@cornell.edu – www.linkedin.com/in/jacinda-rivas

Writing Sample

The writing sample is a memorandum of law which I wrote for my first-year Lawyering course. The memorandum examines an issue of statutory interpretation in the context of religious beliefs. I conducted all the research necessary for the assignment. By the assignment's instructions, the memorandum could not exceed 8 pages.

Plaintiff, Terry Lindberg, respectfully submits this memorandum of law in support of his motion for partial summary judgment. Specifically, Mr. Lindberg seeks a partial summary judgment holding that his beliefs are religious.

Statement of Undisputed Facts

Mr. Lindberg was Committed to Doing an Excellent Job at Crestview

For ten years, Mr. Lindberg worked for the Crestview Nursing Home. *See* Evid. Hr’g Tr. 3:7-8. He worked as a registered nurse, where he was responsible for taking vital signs, administering medication, performing assessments, carrying out doctors’ orders and completing paperwork regarding medication intakes. *See id.* at 3:11-15. He also took on supervisory responsibilities over other employees such as the nursing assistants and other health aides. *See id.* at 3:15-16. While working at Crestview, Mr. Lindberg took classes to obtain a license in nursing home administration. *See id.* at 5:16-23.

In October 2018, Crestview promoted Mr. Lindberg to nursing home administrator, which put him in charge of the facility. *See id.* at 3:18-19. This promotion was one of several Mr. Lindberg received while working for Crestview. *See id.* at 5:14-15. He managed the day-to-day operations, including “hiring, training, and terminating staff; ensuring compliance with local, state and federal regulations; . . . and troubleshooting any issues.” *See id.* at 3:21-25. Mr. Lindberg assisted with patient care on fifteen occasions while working as the administrator. *See id.* at 5:42-44. Thus, the position requires little to no patient care. *See id.* at 5:36-37.

Mr. Lindberg Extended His Dedication to His Faith

In October 2018, Mr. Lindberg adopted his faith. *See id.* at 4:27. His belief developed shortly after he received the flu vaccine and got very sick: he experienced severe headaches and chills before catching the flu, which was “the sickest that [he] had ever been.” *See id.* at 4:27-30. The sickness led him to consider his existence. *See id.* at 4:31. He saw a connection between his

interactions with the Universe and what happened to him physically. *See id.* at 4:32-33. He believes that if he did not respect and honor the world, it would not respect him. *See id.* at 4:33-34. For people to live in harmony with the Universe, they must consume the minimum needed to survive, and give thanks before removing anything from the Universe. *See id.* at 6:38-40. According to Crestview, Mr. Lindberg's religion does not address how human beings came into existence or what happens when they die. *See id.* at 9:35-36. Nor is there a deity to which they pray. *See id.* at 4:18. The religion does, however, acknowledge that the Universe should be in harmony *See id.* at 4:18-19. Consequentially, every day is a religious holiday *See id.* at 6:44.

Mr. Lindberg's religion teaches people to respect all living things. *See id.* at 3:40-41. He started eating only for sustenance, and he gives thanks before ingesting any food. *See id.* at 4:34-36. If he does not, he dishonors and disrespects the Universe and the plant or animal that gave its life. *See id.* at 3:41-44, 4:1-2. If he does not honor or respect the plant or animal, bad things will happen. *See id.* at 4:11-12. There is no evidence that anyone thanked the chickens or the fertilized eggs for their service in making the flu vaccine, and thus Mr. Lindberg believes it would be disrespectful to allow the product to be injected in his body. *See id.* at 4:5-7. The potential consequences of taking the vaccine include physical ailments, such as sore muscles at the spot of injection, headaches, flu-like symptoms, or the flu itself. *See id.* at 4:14-16.

Mr. Lindberg Holds Fast to His Faith in the Face of Termination

Mr. Lindberg applied for his first religious exemption to the flu vaccine in 2019. *See id.* at 8:29. He completed the religious exemption application and explained his claim, including a description of his religion. *See id.* at 8:31-33. The executives in charge of exemptions reviewed his application. *See id.* at 8:33-34. They denied Mr. Lindberg's claim because they thought that his beliefs were personal and secular. *See id.* at 8:36-38. While there are staff at Crestview who

claim exemptions, “Crestview has never granted a religious exemption to anyone practicing a non-traditional religion.” *See id.* at 8:25-26; 10:7-8. Mr. Lindberg’s beliefs are non-traditional because his religion not one that a person often hears about, such as Islam, Judaism, or Catholicism. *See id.* at 9:22-29. The nontraditional nature of his beliefs was “one of the reasons why Crestview denied him the exemption.” *See id.* at 9:30-31.

Mr. Lindberg held the position as the nursing home administrator until September 2019 when Crestview fired him for refusing to take the flu vaccine. *See id.* at 3:35. He has not applied to any jobs as a nursing home administrator because, among other reasons, they require the staff to be vaccinated against the flu. *See id.* at 6:10-17. Nursing homes with low staff vaccination rates might have trouble getting people to send their loved ones. *See id.* at 10:15-20. Thus, Mr. Lindberg has been out of work and unable to find a job. *See id.* at 4:43.

Argument

The moving party is entitled to a partial summary judgment when there is no genuine issue to be tried in the case, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). When the moving party provides factual support for its allegations, the adverse party may not defeat the motion by resting on mere conclusory allegations with no supporting legal arguments or factual submissions. *See SEC v. Research Automation Corp.*, 585 F.2d 31, 33 (2d Cir. 1978).

The courts have forth three useful indicia of religion:

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.

See Africa v. Com. of Pa., 662 F.2d 1025, 1032 (3d Cir. 1981).

I. Mr. Lindberg's Beliefs Address Fundamental and Ultimate Questions.

A. A Belief Is a Religion if It Addresses Fundamental and Ultimate Questions.

First, a belief is a religion if it addresses fundamental and ultimate questions having to do with deep and imponderable matters. *See Africa*, 662 F.2d at 1032. Ultimate questions are those concerning right and wrong, or good and evil. *See id.* at 1033. According to a district court in the Northern District of California, fundamental and ultimate questions must theorize humankind's nature or their place in the universe. *See Conner v. Tilton*, No. C 07-4965, 2009 U.S. Dist. LEXIS 111892, at *30 (N.D. Cal. Dec. 2, 2009). The same court found that imponderable matters are those that are impossible to assess with exactness. *See id.* at *28.

When a person chooses conduct that is desirable for their life, that conduct does not automatically become morally necessary. *See Africa*, 662 F.2d at 1033. Anti-vaccination beliefs can be part of a broader religious faith. *See Fallon v. Mercy Cath. Med. Ctr.*, 877 F.3d 487, 492-93 (3d Cir. 2017). For the objection to the vaccine to be part of a broader religious faith, the objection must be religious rather than medical. *See id.* at 492. A district court in the Western District of Pennsylvania held that dietary beliefs constitute deep and imponderable matters when they go beyond personal dietary preference. *See Hall v. Klemm*, 2017 U.S. Dist. LEXIS 14767, at *28 (W.D. Pa. Feb. 7, 2017). The same court established that the belief that "certain foods will transfer angry animal spirits to [a person's] own mind and body" was a deep and imponderable matter because the belief extends beyond dietary preference. *See id.*

B. Mr. Lindberg's Beliefs Concern Fundamental and Ultimate Questions.

Mr. Lindberg's beliefs address fundamental and ultimate questions involving deep and imponderable matters. *See Africa*, 662 F.2d at 1032. His religion addresses fundamental and ultimate questions because it declares that living in harmony with the Universe means people

should consume the minimum needed to survive, and they should give thanks before removing the food from the Universe. *See id.* These beliefs concern right and wrong because if one does not honor or respect the plant or animal, bad things will happen. *See id.* at 1033. The religion addresses fundamental and ultimate questions because it theorizes regarding humankind and its place in the Universe by acknowledging the Universe and the need for harmony within it. *See Conner*, 2009 U.S. Dist. LEXIS 111892 at *30. These questions are imponderable matters because the belief is incapable of being evaluated with exactness. *See id.* at *28.

If Mr. Lindberg took the vaccine, he would violate his morally necessary because he must thank the animal prior to consumption and the chicken was not thanked prior to fertilizing the eggs for the vaccine. *See Africa*, 662 F.2d at 1033. Mr. Lindberg's anti-vaccination views are grounded in his faith because it would disrespect the Universe to be injected without thanking the chicken. *See id.* His view is a religious objection because if he were to disrespect nature, bad things would happen, which is not limited to health concerns. *See Fallon*, 877 F.3d at 492-93. Mr. Lindberg's beliefs also constitute a deep and imponderable matter because the faith stems from living in harmony with nature. *See Hall*, 2017 U.S. Dist. LEXIS 14767 at *28. Similar to the beliefs in *Hall*, which believes bad things will happen if you consume certain foods, Mr. Lindberg believes the consumption of an animal without honoring it will result in bad things. *See id.* Therefore, as the court did in *Hall*, the Court should determine Mr. Lindberg's beliefs constitute a deep and imponderable matter. *See id.*

II. Mr. Lindberg's Beliefs Are Comprehensive in Nature.

A. A Belief Is Religious if It Is Comprehensive in Nature; It Should Consist of a Belief-System as Opposed to an Isolated Teaching.

Next, a set of beliefs are considered a religion if they are comprehensive in nature; a religion consists of a belief-system as opposed to an isolated teaching. *Africa*, 662 F.2d at 1032.

A belief is comprehensive if its teachings are consciously aimed at answering questions regarding the nature the world and humans. *See id.* at 1035. Thus, the belief is not confined to one question or moral teaching, and instead it has a broader scope. *See id.* An appellate court in Texas found that the test of a whether a belief is comprehensive is if “those convictions are based on a uniform and articulable set of principles which lay a claim to universal application.” *See Strayhorn v. Ethical Soc’y of Austin*, 110 S.W.3d 458, 470 (Tex. App. 2003).

B. Mr. Lindberg’s Beliefs are Comprehensive in Nature.

Mr. Lindberg’s beliefs are comprehensive in nature. *See Africa*, 662 F.2d at 1032. His beliefs are comprehensive because they are consciously aimed at addressing questions concerning how one interacts with the Universe and how it physically affects them, which provide answers regarding the nature of the world and man. *See id.* at 1035. Mr. Lindberg’s beliefs are not isolated to one moral teaching but rather elaborates a connected view of humans and their place in the Universe to create harmony. *See id.* Even though Crestview argues that the religion does not address how human beings came into existence or what happens when they die, it articulates an explanation of harmony in the Universe, which has a broader scope. *See id.* The views are based on a uniform and articulable set of principles, such as what it means to live in harmony with the Universe. *See Strayhorn*, 110 S.W.3d at 470. This view entails that people only consume the minimum to survive, and they give thanks before removing anything from the Universe. *See Evid. Hr’g Tr.* at 6:38-40.

III. Mr. Lindberg’s Beliefs Have Formal and External Signs.

A. A Religion Can Be Recognized by the Presence of Formal and External Signs.

Finally, a religion can often be recognized by the presence of certain formal and external signs. *See Africa*, 662 F.2d at 1032. The signs “include formal services, ceremonial functions, the

existence of clergy, structure and organization, efforts at propagation, observance of holidays and other similar manifestations associated with the traditional religions.” *See id.* at 1035 (citing *Malnak v. Yogi*, 592 F.2d 197, 209 (3d Cir. 1979)). The signs can include any formal or external signs that are analogized to accepted religions. *See id.* However, according to an appellate court in Texas, a religion may exist without any signs; thus, their absence is not dispositive on the question of a belief being religious because whether a belief system concerns ultimate questions and is comprehensive are a more decisive standard for determining if a belief is a religion. *See Strayhorn*, 110 S.W.3d at 471.

B. Mr. Lindberg’s Beliefs Have Formal and External Signs.

Mr. Lindberg’s religion recognizes formal and external signs. *See Africa*, 662 F.2d at 1032. It has formal and external signs because, like other religions, it observes holidays. *See id.* at 1035. Mr. Lindberg’s religion observes holidays because every day is a special day or a religious holiday. *See Evid. Hr’g Tr.* at 6:44. Holidays are a formal sign that is analogized to accepted religions, such as Christmas for Catholics or Eid Mubarak for Muslims. *See id.* at 1035. Though Mr. Lindberg’s beliefs do not have a name or other known followers, those beliefs are still religious because a religion may exist without any signs. *See Strayhorn*, 110 S.W.3d at 470. Even if the Court concludes Mr. Lindberg’s beliefs have no formal or external signs, the Court should still conclude the beliefs constitute a religion because the existence of signs is not dispositive on the question rather the Court should analyze whether the beliefs concern ultimate questions and are comprehensive. *See id.*

Conclusion

For the reasons discussed above, this Court should enter a partial summary judgment in favor of Mr. Lindberg holding that, as a matter of law, his beliefs are religious.

Applicant Details

First Name	Ian
Last Name	Roberson
Citizenship Status	U. S. Citizen
Email Address	pwn6tk@virginia.edu
Address	<div>Address</div> <div>Street</div> <div>2101 Arlington Blvd Unit, Unit PV-346-A,B</div> <div>City</div> <div>Charlottesville</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>22903</div> <div>Country</div> <div>United States</div>
Contact Phone Number	6175436505

Applicant Education

BA/BS From	Colorado College
Date of BA/BS	May 2021
JD/LLB From	University of Virginia School of Law http://www.law.virginia.edu
Date of JD/LLB	May 1, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Virginia Journal of Law & Technology
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
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Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Konnoth, Craig
craig.konnoth@virginia.edu
(434) 924-7361

Harmon, Rachel
rharmon@law.virginia.edu
(434) 924-7205

Schwartzman, Micah
schwartzman@law.virginia.edu
434-924-7848

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Ian M. Roberson

2101 Arlington Boulevard Apt. 346, Charlottesville, VA 22903 | pwn6tk@virginia.edu | (617) 543-6505

May 31, 2023

The Honorable Jamar Walker
U.S. District Court, E.D. Virginia
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers. I expect to receive my J.D. in May 2024 and will be available to work any time after that.

As an out gay law student, I am interested in clerking for you specifically. My experience as a gay man led me to become a lawyer; through law school, it has shaped how I approach legal issues. During my time at UVA, I have served in leadership in the Lambda Law Alliance and have written about the interaction between the First Amendment and gender expression. I want to begin my legal career by learning from and connecting with accomplished gay lawyers.

I have enclosed a copy of my resume and my law school transcript. As a writing sample, I have enclosed an excerpt from the above-discussed paper. Finally, letters of recommendation from Professors Rachel Harmon, Craig Konnoth, and Micah Schwartzman will be sent separately by the school.

If you have any questions or need to contact me for any reason, please feel free to reach me at the above address and phone number. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ian Roberson', with a long horizontal stroke extending to the right.

Ian Roberson

Ian M. Roberson

2101 Arlington Boulevard Apt. 346, Charlottesville, VA 22903 | pwn6tk@virginia.edu | (617) 543-6505

EDUCATION

University of Virginia School of Law, Charlottesville, VA

J.D., Expected May 2024

- *Virginia Journal of Law and Technology*, Executive Editor
- Lambda Law Alliance, Firm and Alumni Relations Chair
- Student Bar Association, Student Records Liaison
- First Amendment Clinic

Colorado College, Colorado Springs, CO

B.A., Political Science, with Distinction, *magna cum laude*, May 2021

- GPA: 3.94
- Fred A. Sondermann Award for overall achievement and contribution to the Political Science department
- Mock Trial, Team Captain

EXPERIENCE

King & Spalding, LLP, Washington, D.C.

Summer Associate, incoming, May 2023 – August 2023

Professor Craig Konnoth, University of Virginia School of Law, Charlottesville, VA

Research Assistant, June 2022 – present

- Researched and wrote analysis of historical legal treatment of sexuality for forthcoming article
- Edited, cited, and proofread law review submissions

The Rutherford Institute, Charlottesville VA

Legal Intern, June 2022 – August 2022

- Researched and wrote legal memoranda addressing civil liberties
- Drafted briefs and motions for trial and appellate level cases
- Prepared amici curiae briefs in the Fifth Circuit and at the Supreme Court analyzing constitutional questions including sovereign immunity and double jeopardy

Colorado College Office of Admission, Colorado Springs, CO

Admission Ambassador, May 2018 – May 2021

- Managed phone, email, and in person contacts with the Office of Admission
- Reviewed, labeled, and organized over 200 applicant files per day

Foundation for Individual Rights in Education, Philadelphia, PA

Intern, May 2020 – August 2020

- Researched campus speech policies and analyzed potential legal issues
- Wrote internal issue memoranda, advocacy toolkits, and online opinion pieces

U.S. Senator Edward Markey, Boston, MA

Constituent Services Intern, May 2019 – August 2019

- Conducted economic, telecommunications, and foreign policy research
- Managed constituent contacts, office data entry, and press conference preparation

INTERESTS

Digital music production, cooking, snowboarding

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW

Name: Ian Roberson

Date: June 07, 2023

Record ID: pwn6tk

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

FALL 2021

LAW	6000	Civil Procedure	4	B+	Bamzai,Aditya
LAW	6002	Contracts	4	B+	Hellman,Deborah
LAW	6003	Criminal Law	3	A-	Coughlin,Anne M
LAW	6004	Legal Research and Writing I	1	S	Buck,Donna Ruth
LAW	6007	Torts	4	A-	Abraham,Kenneth S

SPRING 2022

LAW	6001	Constitutional Law	4	A-	Solum,Lawrence
LAW	6104	Evidence	4	A-	Mitchell,Paul Gregory
LAW	6005	Lgl Research & Writing II (YR)	2	S	Buck,Donna Ruth
LAW	6006	Property	4	B+	Nicoletti,Cynthia Lisa
LAW	9111	Sexuality and the Law	3	A+	Konnoth,Craig

FALL 2022

LAW	6102	Administrative Law	4	A-	Duffy,John F
LAW	7017	Con Law II: Religious Liberty	3	A-	Schwartzman,Micah Jacob
LAW	7009	Criminal Procedure Survey	4	A+	Harmon,Rachel A
LAW	8634	First Amendment Clinic (YR)	4	CR	Kalish,Ian C.

SPRING 2023

LAW	7788	Science and the Courts (SC)	1	B+	Rakoff,Jed S
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SPRING 2023

LAW	8003	Civil Rights Litigation	3	A-	Frampton,Thomas Ward
LAW	8635	First Amendment Clinic (YR)	4	H	Weeks,Lin
LAW	7062	Legislation	4	A-	Nelson,Caleb E
LAW	7071	Professional Responsibility	2	A-	Faglioni,Kelly

May 30, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Clerkship Letter of Recommendation for Ian Robertson

Dear Judge Walker:

I write to recommend Ian Roberson for a clerkship with your chambers. Ian has been my student, research assistant, and has held board positions in student organizations I have advised. He has been truly impressive in every respect.

First, Ian was a student in my class, Sexuality Gender Identity, and the Law. Ian was the only first year student in the class, but I was impressed (and frankly, very surprised) at his grasp of the issues. Admittedly, Ian did not participate heavily during the class—but that was to be expected given that he was the only first year student, in a class heavily dominated by third year students. But I found Ian to always be extremely dedicated and prepared. His note-taking was leaps and bounds beyond that of his classmates—he followed every aspect of the discussion, remembered every class conversation, and always came prepared, with deep questions that were grounded in a close reading of the assigned texts. And while Ian did not participate heavily in the classroom, he made it a point to visit office hours with additional perspicacious questions.

Despite this favorable view of Ian, I was still extremely surprised with the sophistication and imaginativeness of his final project. Ian had proposed writing on free speech and transgender rights. I warned him that this was well trodden ground—many academics, since the 1990s, have argued that individuals have First Amendment interests in how they express their gender.

But Ian identified a sophisticated, nuanced, and inventive argument even in this area.

Ian began the paper where most free speech and trans rights scholars leave off: “it might be true that identity-affirming dresswear is protected conduct.” But Ian was more interested in making a broader point. That is, First Amendment “doctrine itself has evolved in response to cases involving gender-expressive dress.”

I had earlier expressed skepticism at the argument—how can one measure how a set of cases affects doctrine? And Ian, in his paper, acknowledge that “he distinction present might, at first blush, appear trivial. It is a disagreement over the extent to which First Amendment jurisprudence has shaped or been shaped by gender-expressive dress conduct.” But, as Ian explains, “the centrality of transgender litigants in the development of expressive conduct doctrine” shapes the “open texture” of First Amendment rights. (Again, I was deeply impressed by a first year student’s familiarity with H.L.A. Hart’s work). Further, he notes, the focus on how “gay and lesbian marriage advocates” have shaped constitutional law, coupled with the “blind eye to similar advances made by transgender rights litigation minimizes the agency of transgender rights advocates, and trans people as a class.”

But how exactly did trans advocacy shape First Amendment doctrine, and how could one trace the shaping of the doctrine to trans rights advocacy? Ian first explores the history of student speech cases starting with *Tinker v. Des Moines*. He concludes this history by observing that while courts have followed *Tinker* in defending students’ rights to express their beliefs regarding political, religious, and other matters, “courts have historically been far less lenient with cases in which expressive clothing is understood to express a message only about its wearer’s identity.” (My emphasis). Ian then goes on to defend this claim by marching through several cases involving racial or cultural identity, a sort of “before” picture of the state of the doctrine, before transgender advocacy.

Ian then shows how in cases involving gender expression, a new trend began emerging, where courts became more attuned to First Amendment identity claims. The first cases involving gender expression involved non-transgender litigants—and this was important. To some degree, he argues, the early cases succeeded because “the clothing worn” by these cisgender plaintiffs “create meaning not because it necessarily conflict with the wearer’s perceived gender [or sex assigned at birth],” as some would argue in the case of transgender litigants, “but because it expresse an affirmative message about their identity.” He continues by looking to cases involving transgender individuals who relied on these earlier cases. Ian recognizes that his pool of cases is small. So he offers alternative hypotheses to explain his observations to explain why cases involving gender expression turned out differently from those involving racial and cultural expression—and considers the conclusions one can draw from that fact.

I largely agree with Ian’s claims—mainly because they are nuanced and narrow. He recognizes that his claims might actually only apply to cases involving gender expression because of the distinctive ways race and culture are understood as “innate and inflexible.” While I think that some of his analysis regarding earlier cases could do with more nuance on the distinction between belief and identity (for example, isn’t the expression of political or religious belief also expression of identity?) the overall argument is sophisticated and persuasive.

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Ian's paper shows a sharp theoretical understanding of the issues at stake. But fundamentally, it is a doctrinal paper, showing how First Amendment cases evolved in new and interesting ways. Throughout, Ian showed an understanding of the procedural position of the cases and an excavation of documents that go beyond the usual first year skill set. For example, in various key cases, he cites from complaints and other docketed material. He also notes the difficulty of comparing cases in different procedural positions, and identifies a smaller subset of comparable cases, because the dispositions all occurred at the motion to dismiss stage.

In short, Ian's paper by far outstripped any of his classmates. Indeed, it may be one of the top three papers a student has ever written for me in this class.

After his stellar performance, of course, I asked Ian if he would be my research assistant. I have found Ian to be obliging, very timely, and extremely thorough. He has assisted on two articles, in both cases, responding on very short notice. Ian numbers among the most responsive research assistants I've had at UVA. His work on this front is particularly impressive given his extensive extra curricular work. Ian was part of a revamping of the Lambda Law Alliance governance, and took over alumni connections. The activity on that front has increased dramatically under his tenure.

Finally, I have particular respect for Ian because of his ability to engage opposing views and find common ground. His first summer, Ian worked for the Rutherford Institute, a conservative/libertarian leaning organization, in Charlottesville. The Institute is not a natural bedfellow with the organizations that I--and, I believe, Ian—is affiliated with. Yet, in conversations, Ian focused exclusively on the common ground he shared with his colleagues, and emphasized how positive his experience was. For example, he noted that the Institute shared goals with progressive groups, including expanding double jeopardy, and contracting sovereign immunity, protections respectively.

I recommend Ian unreservedly for a clerkship in your Chambers. Do not hesitate to contact me with any further questions.

Sincerely,

Craig J. Konnoth

Craig Konnoth - craig.konnoth@virginia.edu - (434) 924-7361

May 30, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I taught Ian in his second year of law school in my Criminal Procedure Survey course. This large course provides an overview of Fourth, Fifth, Sixth, and Fourteenth Amendment doctrines that regulate criminal investigation and adjudication. Like clerking, the course requires reading cases carefully and applying them to new situations. Also, like clerking, the course moves quickly through large amounts of legal material. Ian was a superb student and a pleasure to have in class. He was engaged, thoughtful, and prepared. The exam was longer than I intended, so it demanded that students understood the material, attack problems quickly, and write clearly under time pressure. Ian succeeded by all these metrics and earned a rare A+.

As his transcript suggests, Ian's performance in my class was no fluke. He has done well in law school, earning a 3.69 grade point average, putting him just outside the top decile of his class. But I think even this excellent record understates his performance. Ian's grades have gotten better each semester, as he adjusted to law school and the exam style it demands. He is both adaptable and persistent, and I think his performance in my course indicates that he will make a strong clerk.

Ian's strengths are not merely academic. He is personable and passionate about justice. He gets along well with his peers and is active in student groups, an understated leader rather than a flashy one. He has worked in a variety of settings and takes responsibility seriously. He will get along well in any chambers.

As you can see, I am positive about Ian. I encourage you to hire him. Please let me know if I can be of further assistance.

Sincerely,

Rachel Harmon

Rachel Harmon - rharmon@law.virginia.edu - (434) 924-7205

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of Ian Roberson, who has applied for a clerkship in your chambers. Ian was a student in my course, Constitutional Law II: Religious Liberty, in the fall of 2022. Based on his work in that class, and on his overall record at UVA, I am confident that he will make an excellent clerk. Ian is smart, hard-working, gracious in his demeanor, and has shown a great willingness to work with others whose political and social commitments are very different from his own. That last virtue is often in too short supply these days. Ian is impressive in that regard, and I recommend him to you with great enthusiasm.

Ian was superb in my class on religious freedom last year. I had 72 students, including most of the top-25 in the second-year class. I allow a paper option instead of a traditional exam, and 20 students chose to exercise it. From that group, Ian's paper was among the more ambitious. He wrote about the implications of the Supreme Court's decision in *Kennedy v. Bremerton School District*, in which the Court announced that it had abandoned the *Lemon* test as a framework for interpreting the Establishment Clause of the First Amendment. Ian's paper attempts to understand the Court's new approach, which was presented in terms of "history and tradition." Finding that this methodology provides relatively little guidance, and rejecting a functional approach, Ian instead argues for a form of proportionality review, similar in some ways to the structure of judicial scrutiny employed by constitutional courts in Canada and Europe. This is an intriguing possibility, one that might help to make sense of First Amendment rights, even if this Court is not disposed to adopt it, as Ian realizes.

Ian's excellent performance in my class is consistent with his overall academic record. After four semesters, his cumulative GPA is 3.68, which puts him inside the top 20% of his class. He has taken a difficult course load, emphasizing public law courses involved in civil rights litigation. He has excelled in those, including a rare and notable A+ from Rachel Harmon in criminal procedure. His grades have improved year-over-year, and I would expect that he will continue to perform at a high level through graduation.

Ian's work is motivated by a broader commitment to civil rights, especially rights of free speech, religious free exercise, and sexual autonomy. He has interned for both the Rutherford Institute and the Foundation for Individual Rights in Education (FIRE). He currently serves on the board of Lambda Law Alliance, and wherever legal practice takes him, Ian will continue to be active in supporting the LGBTQ+ community.

On a personal note, if you decide to meet him, I think you will find that Ian is easy to talk with, friendly, and thoughtful. He wants to understand others and to build bridges, and he has put in the work to do just that. I am confident that he will be a team player, and that he will work well with anyone in chambers, even those with whom he might have real disagreements. He clearly values that ability and has demonstrated it over many years.

Ian Roberson has a bright career ahead of him in the law, and I hope you will give him careful consideration. If you have any questions, please feel free to reach me at 434-924-7848.

Sincerely,

/s/

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EXPRESSIVE DRESS, EVOLVED LAW: Responding to Kosbie's Account of Gender-Expressive Dresswear Doctrine

Jeffrey Kosbie's *(No) State Interests in Regulating Gender: How Suppression of Gender Nonconformity Violates Freedom of Speech*¹ argues that gender-expressive dresswear — clothing that conveys a message about the gender identity of its wearer — is protected by the First Amendment expressive conduct doctrine. Kosbie advances two arguments. First, that the First Amendment value of autonomy supports a reading of free speech as protective of “gender nonconforming dress,”² and second, that such dress is protected within the contemporary expressive conduct framework.³

This article addresses Kosbie's second argument. I attempt to recontextualize Kosbie's conclusion that gender non-conforming dress is protected conduct by showing that cases involving gender-expressive dress conduct have themselves led to expansions of the expressive conduct doctrine. First Amendment doctrine protects gender-expressive dress because those same cases have reframed judges' thinking.

The distinction I present might appear trivial. It is a disagreement over the extent to which First Amendment jurisprudence has shaped or been shaped by gender-expressive dress cases. But framing matters; the reasoning underlying judicial determinations about the scope of rights shapes “what values the law embodies.”⁴ Doctrine does not exist independent of facts — it evolves in response to unique cases. In this case, development I describe in expressive conduct

¹ Jeffrey Kosbie, *(No) State Interests in Regulating Gender: How Suppression of Gender Nonconformity Violates Freedom of Speech*, 19 WM. & MARY J. WOMEN & L. 187 (2013).

² I quote “gender non-conforming” from Kosbie, who uses the term to mean dresswear that does not conform to observers' expectations of gender presentation. I use it interchangeably with “gender-affirming dress” and “gender-expressive dress,” both of which I feel better represent the function of dresswear as understood by transgender individuals. Jillian Todd Weiss, *The Gender Caste System: Identity, Privacy, and Heteronormativity*, 10 TULANE J.L. & SEXUALITY 123, 132 (2010).

³ Kosbie, *supra* note 1, at 193.

⁴ Marie-Amélie George, *Framing Trans Rights*, 114 NW. U. L. REV. 555, 564 (2019).

doctrine suggests that judges' understandings of the core values enshrined by the First Amendment have changed due to strategies employed by transgender rights advocates.

Framing is also important because it relocates agency. Gay and lesbian legal advocacy groups have made significant advances in the field of constitutional law.⁵ This piece aims to highlight similar developments accomplished by pro-transgender rights advocates.

Finally, the framing of rights-based dialogues informs observers about how rights are exercised. Part II.3 discusses Kosbie's implicit assumption that gender-affirming dress worn by transgender people is subversive. A wide array of views exists within the transgender community on the relationship between dress and gender. While some transgender people might understand their conduct to be disruptive of the mainstream, others see themselves as essentially conforming to traditional gender stereotypes.⁶ To implicate First Amendment protections, I argue, clothing does not have to be subversive.

I. First Amendment Protection of Expressive Conduct

[Part I summarizes the development of the expressive conduct doctrine as articulated in *Spence v. Washington*, 418 U.S. 405 (1974). It then reviews the Court's application of the doctrine to non-gender-expressive dresswear.]

II. Development of the Identity-Expressive Dress Doctrine

1. Free Speech Claims Involving Non-Gender-Expressive Dress

To illustrate the development of expressive dress doctrine, I first examine cases involving racially- and culturally-expressive dress. I compare the treatment of those cases to similar claims

⁵ See, e.g., *id.* at 559 (describing the gay rights movement's strategic position, while critiquing its deployment of assimilationist arguments). For examples of queer legal advocacy advancing constitutional law, see, e.g., *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

⁶ Indeed, I argue the malleability in presentations and perceptions of gender might be one reason why transgender dress cases have so distinctly shaped free expression doctrine. See *infra* Part II.3.

that instead involve gender-expressive dress. In the former class of dress-conduct cases, courts have typically declined to afford litigants First Amendment protection.⁷

One of the earliest examples of identity-expressive dress doctrine is found in *New Rider v. Board of Education*, where the Tenth Circuit Court of Appeals upheld the suspension of three Native students because they wore their hair in braids.⁸ While acknowledging that the hairstyles had “no religious significance,” the students argued that they represented “old traditional ways.”⁹ According to them, the hairstyles had cultural import; the students wore them to “learn their culture,” and to “be recognized as Indians” in public.¹⁰

Citing *Freeman v. Flake*,¹¹ in which the Tenth Circuit found that the First Amendment permitted public schools to regulate the length of male hairstyles, the *New Rider* panel upheld the District Court’s dismissal of the students’ case. That the plaintiffs in *Freeman* made “no claim . . . of any racial or religious discrimination” did not differentiate the case. Regardless of communicated content, the panel reiterated, “the wearing of long hair is not akin to pure speech.”¹²

Similarly, in *Zalewska v. County of Sullivan*,¹³ the District Court for the Southern District of New York dismissed a suit in which the state’s Transportation Department ordered a female

⁷ I use Gowri Ramachandran’s definition of identity as characteristics that define one’s self, be they chosen or unchosen. Gowri Ramachandran, *Freedom of Dress: State and Private Regulation of Clothing, Hairstyle, Jewelry, Makeup, Tattoos, and Piercing*, 66 MD. L. REV. 11, 32 (2006). Like Ramachandran, I decline to define identity as immutable. *Id.* at 20-21. For the purposes of my analysis, I will take litigants’ statements about their own identity at face value.

⁸ *New Rider v. Bd. Educ. Indep. Sch. Dist.*, 480 F.2d 693, 696 (10th Cir. 1973), *cert. denied*, 414 U.S. 1097 (1973).

⁹ *Id.* at 696.

¹⁰ *Id.* at 696-97.

¹¹ 448 F.2d 258 (10th Cir. 1971).

¹² *New Rider* at 698. The court did not discuss expressive conduct. At the time of *New Rider*, *Spence v. Washington*, 418 U.S. 405 (1974), discussed *supra* Part I, had not been decided. Nor had *Texas v. Johnson*, 491 U.S. 397 (1989). This article makes no claim that *New Rider*’s holding is attributable wholly to hostility to claims involving racially-expressive dress. Rather, *New Rider* along with the cases discussed *infra* demonstrate an evolution in courts’ thinking about expressive conduct as related to dress.

¹³ 180 F. Supp. 2d 486 (S.D.N.Y. 2002).

Meals on Wheels vehicle driver to cease wearing a skirt while on the job, despite her objection that the policy restricted her “expression of a deeply held cultural value.”¹⁴ The court held that the driver’s clothing was unprotected for two reasons: first, it “contain[ed] ‘no written communication or symbols of any kind,’”¹⁵ and second, that “no reasonable viewer could glean any message from the fact that [the driver] wore a skirt.”¹⁶

Zalewska’s analysis is two-fold. First, the court differentiates between clothing containing “communications or symbols” as message-expressive and clothing that does not contain such communications or symbols as message-less.¹⁷ Indeed, while all clothing might communicate content, only some is so communicative as to merit First Amendment protection. Second, the court finds that, because of the claimed unintelligibility of the driver’s message, no discernable message exists.¹⁸ To the *Zalewska* court, the kinds of cultural values communicated by skirt-wearing are so amorphous that, without further context, they are unintelligible.

*Bivens by Green v. Albuquerque Public Schools*¹⁹ provides a third illustration. There, a federal district court found the suspension of a Black student for sagging his pants to be constitutional. Bivens, the student, argued that sagging his pants represented “a statement of his identity as a black youth and [a] way for him to express his link with black culture and the styles of black urban youth.”²⁰ In his view, the conduct was directly linked to an outward expression of identity. The court rejected that argument, and in a narrow ruling held that Bivens failed to demonstrate whether a triable issue of fact existed on the issue of the intelligibility of his

¹⁴ *Id.* at 491.

¹⁵ *Id.* (citing *Hodge v. Lind*, 88 F. Supp. 2d 1234, 1237 (D.N.M. 2000)).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 899 F. Supp. 556 (D.N.M. 1995)

²⁰ *Id.* at 558.

message.²¹ The *Bivens* holding mirrors *Zalewska* — despite evidence offered by Bivens establishing the link between the pants sagging and Black American identity,²² the court maintained that Bivens failed to demonstrate the existence of understandable communicative content to his message.²³

The emphasis in the three cases on message intelligibility seems to cut against Kosbie’s argument. The courts in acknowledge that dresswear always speaks to some extent about its wearer’s identity. But they ultimately find that the message in question is so unclear that it cannot possibly constitute communicative expression.²⁴ The three holdings should be easily applied to gender-expressive dress. Although gendered clothing might tell observers something about the identity of its wearer, it is unlikely that message would be so clear as to impart onto the conduct First Amendment protection.

But under Kosbie’s thesis — “[W]hen the government singles out gender nonconformity from other conduct, it suppresses expression”²⁵ — these cases should still come out differently. If gender-expressive dresswear is protected under the First Amendment framework, culturally- and racially-expressive dresswear should be afforded a similar, if not identical, treatment.²⁶

Kosbie partially addresses the apparent incongruity. In *Zalewska*, he argues, “the state’s interests are more plausibly unrelated to the message expressed” by plaintiff’s dresswear.²⁷ But in the gender-related dress cases discussed *infra*, the government also cited non-message-related

²¹ *Id.* at 561.

²² *Id.* at 561-62.

²³ *Id.*

²⁴ *Id.*; *Zalewska v. Cnty. of Sullivan*, 180 F. Supp. 2d 486 (S.D.N.Y. 2002).

²⁵ Kosbie, *supra* note 1, at 211.

²⁶ *Id.* at 196 (“Government suppression of gender nonconformity particularly infringes on the core free speech value of autonomy.”); Ramachandran, *supra* note 7, at 36 (“[The] connection between freedom of dress and a notion that control over our own bodies is essential to human dignity.”). If suppression of gender-expressive dress upsets closely held notions of autonomy and dignity, then suppression of racially- and culturally-expressive dresswear almost certainly do the same.

²⁷ Kosbie, *supra* note 1, at 213.

cases to justify suppression.²⁸ Further, that the state bars expressive conduct for reasons unrelated to its message does not alone make the proscription lawful.²⁹ The better explanation is that cases involving gendered dress have changed courts' minds.

2. Free Speech Claims Involving Gender-Expressive Dress

As more cases involving transgender and cross-dressing litigants arose, courts began to take a different tone. An early example is *City of Cincinnati v. Adams*.³⁰ There, the defendant, who was assigned male at birth,³¹ was arrested for violating a municipal code prohibiting individuals from "appear[ing] in a dress or costume not customarily worn by his or her sex."³² Adams was, at the time of the arrest, wearing a blouse, women's slacks, a long-haired wig, earrings, and carrying a purse.³³ The court rejected the ordinance as unconstitutionally vague.³⁴

Adams, which Kosbie uses to illustrate how restrictions on "non-conforming" dress suppress message communication,³⁵ by no means represents a judicial about-face on identity-expressive dresswear. In fact, the court stated unequivocally: "we cannot conclude in this case that defendant's conduct is an expression within the contemplation of the First Amendment."³⁶ However, in conducting its due process analysis, the *Adams* court articulated a more nuanced understanding of the function of dress.

²⁸ For example, in *McMillen v. Itawamba County School District*, the defendant county officials cited "anticipated and material disruption of the educational process" as a reason for prohibiting a female high school student from wearing a tuxedo to prom. Answer of Defendants to First Amended Complaint at 2, *McMillen v. Itawamba Cnty. Sch. Dist.*, 702 F. Supp. 2d 699, 705 (N.D. Miss. 2010) (No. 1:10-cv-00061-GHD-JAD).

²⁹ In school-sponsored contexts, the restrictions must also be "reasonably related to legitimate pedagogical concerns." *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988).

³⁰ 330 N.E.2d 463 (Hamilton Cnty. Mun. Ct. 1974).

³¹ Because decisions are often unclear about the gender identity of litigants in cases involving gender-expressive dress, to the best of my ability I decline to use pronouns or other identity markers unless an individual's self-identification of gender is clearly specified.

³² *Adams*, 330 N.E.2d. at 46.

³³ *Id.* at 49.

³⁴ *Id.* at 51.

³⁵ Kosbie, *supra* note 1, at 189-92.

³⁶ *Id.* at 50.

According to the court, the invalidated prohibition “goes so far as to bring under suspect the woman who wears one of her husband's old shirts to paint lawn furniture, the trick or treater, the guests at a masquerade party, or the entertainer.”³⁷ Plainly, the regulation is overbroad because the clothing worn by the painting woman, the trick or treaters, and the masquerade ball guests do not convey identity-communicative content.³⁸ We know that trick or treaters are not *actually* zombies, and we know that the furniture painter is wearing an old shirt to avoid dirtying her nice clothes. That is why the court’s comparison works. But take a subway passenger. Context suggests that the clothes one wears on a morning commute can be understood to signal a certain raw, unfiltered identity. One’s everyday clothes might tell us more about them than clothing that is worn with respect to external considerations (like on holidays, or for its functional utility). That a person wears a suit at a wedding does not alone suggest he is a well-dressed person, but doing so in a coffee shop might communicate differently. The *Adams* court seems to acknowledge this in its suggestion that the ordinance in question might prohibit even those activities we intuitively understand to convey no identity-based message.³⁹

While *Adams* declined to address the First Amendment implications of the ordinance at issue, other courts have extended its analysis in expressive conduct cases. A U.S. district court in Mississippi took up a similar issue in *McMillen v. Itawamba County School District*,⁴⁰ holding that a lesbian high school student wearing a tuxedo to prom was engaged in protected expressive conduct.⁴¹ The *McMillen* plaintiff succeeded on the argument that her tuxedo communicated a

³⁷ *Id.* at 51.

³⁸ Kosbie, *supra* note 1, at 204.

³⁹ *Id.* But see *Rathert v. Village of Peotone*, 903 F.2d 510 (7th Cir. 1990) (rejecting First Amendment claims by police officers disciplined for wearing earrings off duty).

⁴⁰ 702 F. Supp. 2d 699 (N.D. Miss. 2010).

⁴¹ *Id.* at 705. One could argue that the court’s language here is only dicta. In *McMillen*, the district court denied plaintiff’s motion for a preliminary injunction, finding that it failed to show that the preliminary injunction would be in the interest of the public. *Id.* at 705-06. No authoritative holding was made on the free speech claim, as plaintiff

message about her identity.⁴² Per the court: “The record shows that Plaintiff . . . intended to communicate a message by wearing a tuxedo and to express her identity through attending prom with a same-sex date.”⁴³ Such conduct, it held, “is the type of speech that falls squarely within the purview of the First Amendment.”⁴⁴ Contrast this with *Zalewska* and *Bivens*, where plaintiffs using similar lines of reasoning were unable to prevail.⁴⁵

One explanatory factor for the difference between these cases is the *McMillen* court’s adoption of *Adams*-like reasoning. In this case, the action at issue (a woman wearing a tuxedo) communicated expressive content because of relevant social context. Simply, women do not usually wear tuxedos as formalwear. This logic mirrors *Adams* and suggests that courts more readily interpret gender-related dress in relation to its social context than they might for similar racial or cultural related actions.⁴⁶

Of note: the court’s determination that the tuxedo in *McMillen* was communicative did not rely on whether the tuxedo subverted plaintiff’s gender identity. Rather, that the tuxedo expressed a message about who *McMillen* was (lesbian), and that imparted it with an intelligible meaning. This becomes important in cases involving transgender litigants, whose clothing is more easily understood to communicate a message about gender, not sexual, identity.

For example, in *Doe ex rel. Doe v. Yunits*,⁴⁷ a 2000 case from the Massachusetts Superior Court. Kosbie cites to *Yunits* for the proposition that current doctrine protects gender-expressive

ultimately settled. *McMillen v. Itawamba County School District*, ACLU (Nov. 5, 2010), <https://www.aclu.org/cases/lesbian-and-gay-rights/fulton-ms-prom-discrimination>.

⁴² *Id.* at 703 (“[Plaintiff] wants to wear a tuxedo to the prom so that she can express . . . that ‘it’s perfectly okay for a woman to wear a tuxedo.’”).

⁴³ *McMillen*, 702 F. Supp. 2d at 705.

⁴⁴ *Id.*

⁴⁵ *Zalewska* at 491-92; *Bivens* at 561.

⁴⁶ I contemplate possible explanations for this trend in Part II.3.

⁴⁷ *Doe ex rel. Doe v. Yunits*, 2000 WL 33162199, *1 (Mass. Super. Ct. Oct. 11, 2000), *aff’d*, 2000 WL 33342399 (Mass App. Ct.).

dress,⁴⁸ but the case also illustrates how courts have treated these claims differently from parallel race- and culture-based arguments.

In *Yunits*, a transgender student challenged the application of a school dress code that prevented her from wearing clothing consistent with her female gender identity.⁴⁹ In her complaint, plaintiff alleged that she “has a female identity and believes she is a girl” and that “[her] wearing clothing typically worn by girls is a statement and expression of who [she] is.”⁵⁰ She argued that by preventing her from wearing typically-female clothing, the school violated her right to freedom of expression.⁵¹ Specifically, she challenged the school’s conclusion that allowing a transgender student to wear “girls’ make-up, shirts, and fashion accessories” is so “disruptive or distractive to the educational process” as to justify the school’s prohibition on such behavior.⁵²

The court in *Yunits* found that the student’s choice of dress is protected expressive conduct.⁵³ It reasoned that the dresswear at issue was expressive because it conveyed a message about Yuntis’ identity. Said the court, “plaintiff’s expression is not merely a personal preference but a necessary symbol of her very identity.”⁵⁴ By wearing clothing “traditionally associated with the female gender . . . she is expressing her identification with that gender.”⁵⁵ This conclusion is further underscored by the complaint’s language, which exclusively referred to Yunits using

⁴⁸ Kosbie, *supra* note 1, at 202. I do not dispute that point.

⁴⁹ *Yunits* at *1.

⁵⁰ Complaint at 6, *Doe ex rel. Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. Ct. Oct. 11, 2000) (No. 00-1060A).

⁵¹ *Id.*

⁵² *Yunits* at *1.

⁵³ *Id.* The court based its holding on the Massachusetts Declaration of Rights, Article XVI (now Article LXXVII). *Id.* The Declaration of Rights’ free speech provision is very similar to that found in the First Amendment to the United States Constitution. Compare MA. CONST. pt. I, art. LXXVIII (“The right of free speech shall not be abridged”) with U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech”). Further, the court in *Yunits* provides: “the analysis of [the Massachusetts Declaration of Rights, Article XVI] is guided by federal free speech analysis.” *Yunits* at *1.

⁵⁴ *Yunits* at *3.

⁵⁵ *Id.*

feminine pronouns.⁵⁶ The court in *Yunits* had no choice but to decide the case with the understanding that the sole message conveyed by the clothing was: *I am a woman*. Even with that limitation, it found such message constitutive of expressive conduct.

Another of the few cases to address this issue is *Logan v. Gary Community School Corporation*, in which a transgender student was refused entry to her school's prom because she wore a dress.⁵⁷ The federal district court in *Logan* declined to grant the school's motion to dismiss.⁵⁸ The plaintiff later settled with the school district.⁵⁹

Because no final ruling was made on the expressive nature of the student's prom dress, it is difficult to glean cohesive reasoning, much less precedential weight, from *Logan*. However, *Logan* might be an apt case for comparison: both *Bivens* and *Zalewska* involved motions to dismiss which were ultimately granted.⁶⁰ The *Logan* court acknowledged "the success of the parties' positions rests on the question of whether Logan's prom dress was [her] preferred form of personal self-expression."⁶¹ On that question alone, the court believed plaintiff could make her case. That the school district settled might (though does not necessarily) lend to a conclusion that it too thought she had at least a small chance of success on the merits.⁶²

The complaint filed in *Logan* is also illustrative. There, lawyers for Logan make clear that she has a "deeply rooted awareness of [herself] as feminine that is fundamental to [her]

⁵⁶ Cited *supra* note 37.

⁵⁷ *Logan v. Gary Cmty. Sch. Corp.*, 2008 WL 4411518, *1 (N.D. Ind. Sept. 25, 2008). Despite the court's reference to her as a "transgender male," the plaintiff in *Logan* was "a transgender student who presents as female but was assigned the sex designation of male at birth." *Id.* at *1; *Logan v. Gary Community School Corporation*, LAMBDA LEGAL, <https://www.lambdalegal.org/in-court/cases/logan-vs-gary-community-school>.

⁵⁸ *Logan* at *5.

⁵⁹ LAMBDA LEGAL, *supra* note 57.

⁶⁰ *Bivens by Green v. Albuquerque Pub. Schs.*, 899 F. Supp. 556, 557 (D.N.M. 1995); *Zalewska v. Cnty. of Sullivan*, 180 F. Supp. 2d 486, 487 (S.D.N.Y. 2002).

⁶¹ *Logan* at *4.

⁶² Alternative explanations include the high cost of discovery and the potential for negative publicity.

identity.”⁶³ Further, Logan’s lawyers argued that her dresswear was protected expressive conduct, specifically because her gender identity was “communicated by Logan’s feminine presentation.”⁶⁴ The *Logan* complaint supplements the above-discussed denial of the motion to dismiss. It suggests that the court, on the complaint alone, believed sufficient facts existed to prove Logan’s dress clearly communicated her self-identity, and that such communication constituted protected speech.⁶⁵

3. Explanations for the Difference in Treatment

Thus far, I have developed a small but instructive line of cases involving identity-expressive dresswear. In cases involving racially- or culturally-expressive dresswear, courts have generally been less receptive to claims that dresswear which expresses its wearer’s identity is protected by the First Amendment expressive conduct doctrine.⁶⁶ It is when courts begin to hear cases involving gender-expressive dresswear that the argument seems to gain a foothold.

So, Kosbie is not necessarily mistaken. I do not disagree that courts have generally suggested, if not completely recognized, that the current expressive speech doctrine applies to gender-expressive dresswear. But there is more going on. There are few practical differences between clothing that expresses racial or cultural identity and that which expresses gender; courts have nonetheless treated the two very differently.⁶⁷

⁶³ Complaint at 4, *Logan v. Gary Cmty. Sch. Corp.*, 2008 WL 4411518 (N.D. Ind. Sept. 25, 2008) (Civ. Action No. 2:07-CV-431 JVB).

⁶⁴ *Id.* at 9.

⁶⁵ One area of potential disagreement: the complaint uses “he” and “him” pronouns in reference to Logan. *See id.* at 1 (“Logan expresses his deeply-rooted femininity through his appearance and manner.”). This might suggest that Logan’s lawyers did not *really* understand Logan to be a woman. But this argument makes my case stronger, by suggesting that courts are receptive to the gender-identity-as-inherently-expressive argument even when the expressed gender-identity does not track neatly onto a binary definition of gender. *See* discussion *infra* Part II.3 for an analysis of the strategic risks of defining gender-expressive conduct narrowly.

⁶⁶ *See* discussion *supra* Part II.1.

⁶⁷ *See* discussion *supra* Part II.1-2.

There are three ways to understand this trend. The first is implicit in Kosbie's argument: non-conformity highlights the expressive message of dresswear (or maybe, actually gives the dresswear an expressive message).⁶⁸ This explanation seems to be facially consistent with the cases involving gender-expressive dresswear, where the dresswear at issue does depart from traditional gendered expectations. But I find this explanation unconvincing. For one, *New Rider* and *Bivens* also involved non-conformity. In both cases, racial minorities used dresswear to express affiliation with their racial identity.⁶⁹ *Zalewska*, too, arguably contained an element of non-conforming expressive content. Even if her wearing of the skirt is not non-conformity so much as it is gender traditionalism, *Zalewska*'s cultural belief is outside the mainstream.⁷⁰

And the non-conformity explanation cannot capture all iterations of gender-expressive dress. While perhaps explanatory for cross-dressing cisgender plaintiffs, like that in *McMillen*, as applied to transgender litigants the non-conformity explanation assumes that transgender people are not really the identity they claim. Indeed, if we accept that transgender women are women, their donning women's clothing is in no sense non-conformist. The conformity explanation imbues into the gender-expressive dress doctrine an arbitrary line between cis and trans people of the same gender identity.

But in responding to Kosbie's implicit understanding of transgender identity as an expression of non-conformity, it is crucial not to swing the pendulum too far in the opposite direction. That is to say, a legal argument that proceeds, "cis and transgender women are women in the exact same sense" also fails. First, this is not how many transgender women understand

⁶⁸ See Kosbie, *supra* note 1, at 206 ("Gender nonconformity expresses a message because it noticeably violates a set of gender expectations.").

⁶⁹ See discussion *supra* Part II.1. Though maybe courts are willing to differentiate between subversion of individualized expectations and group expectations. That is, while sagging affirms Black identity, transgender dresswear disavows traditional expectations of gender performance.

⁷⁰ See discussion *supra* Part II.1.

themselves.⁷¹ In fact, many trans women understand themselves to occupy a space in between — or, maybe, outside of — traditional binary understandings of gender.⁷² Julia Serano makes the case that trans gender-identity is shaped both by internal understandings of self *and* a process of socialization that itself results from the decision to transition (Serano calls this one’s “experiential gender”).⁷³ It would be both impossible and inadvisable to attempt a conclusive review of trans identity theory; suffice it to say that although litigation often requires strategic compromise, a workable legal theory of gender identity must incorporate the practical and theoretical differences between cis and trans womanhood.⁷⁴ Thus, reasoning that accounts only for non-conformity is both incomplete and rife with practical difficulties.

A second alternative explanation for the differential legal treatment of gender-expressive dress looks to the centrality and accessibility of clothing as a gender identifier. Kosbie makes this argument himself. “We assume that we can reliably identify someone as male or female based on his or her appearance,”⁷⁵ he says. “Men look and act certain ways because they are men. Women look and act certain ways because they are women.”⁷⁶ Our expectations of gender identity are shaped by visual cues that are both controllable and malleable in a way that race or cultural heritage are not. In plain language, this is easy for courts. It is easy for the judge in *Yunits* to see why dresswear that indicates femininity is essential to expressing a message of female identity. It is less easy for the *Bivens* judge to understand why sagging, a style of dress that can be worn by

⁷¹ JULIA SERANO, WHIPPING GIRL 216 (2d ed. 2016).

⁷² *Id.* at 219.

⁷³ *Id.* at 222-24.

⁷⁴ *Id.* at 216-17. There are further strategic advantages to rejecting the innate-binary gender framework; Marie-Amélie George argues: “Positional compromise may be necessary in some situations, but not all . . . gender identity protections have fared best when they are part of the initial legislative package, instead of pursued as incremental gains.” George, *supra* note 4, at 149.

⁷⁵ Kosbie, *supra* note 1, at 199.

⁷⁶ *Id.* See also JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (1990); Ramachandran, *supra* note 7.

anyone, speaks specifically to one's race. This explanation looks to perceived, not to actual, identity, which to some extent brings us right back around to the *Spence* intelligibility doctrine.⁷⁷ Although, our question now is how directly the chosen method of expression speaks to the identity expressed.

A final theory is that courts implicitly view gender as the product of personal choice. That is, while culture and race are innate and inflexible, gender identity is far more plastic. Some evidence for this theory can be found in the language of courts. *Yunits*, for example, refers to the expressive clothing as that which "plaintiff chooses to wear."⁷⁸ The *Logan* court consistently uses "he" pronouns to refer to the plaintiff, a trans woman,⁷⁹ suggesting that the court views the dress as inherently disconnected from its wearer's gender identity. Courts have been in the past reluctant to adopt immutability as a defining characteristic of sexuality.⁸⁰ Some queer legal advocates have rejected the immutability argument all together.⁸¹ Potentially, there exists a far less unified understanding of the functional mechanics underlying one's sexuality and gender than those underlying racial or cultural identity.

Possibly the shape this argument takes — as a free speech issue — itself reinforces the notion of gender-expressive dress as choice. That a First Amendment analysis looks to the expressive content of conduct suggests active stance-taking. Message transmission rarely happens passively. In presenting gender-expressive dresswear as inherently communicative, some courts might understand the dress in question to reflect its wearer's choice of identity itself, while it in reality represents an *expression* of that identity.⁸² It is ultimately impossible to know

⁷⁷ *Spence v. Washington*, 418 U.S. 405 (1974).

⁷⁸ *Doe ex rel. Doe v. Yunits*, 2000 WL 33162199, *6 (Mass. Super. Ct. Oct. 11, 2000).

⁷⁹ See, e.g., *Logan v. Gary Cmty. Sch. Corp.*, 2008 WL 4411518, *2 (N.D. Ind. Sept. 25, 2008) ("On the night of Logan's senior prom, he arrived wearing a prom dress of the type normally worn by high school girls.").

⁸⁰ Tiffany C. Graham, *The Shifting Doctrinal Face of Immutability*, 19 VA. J. SOC. POL'Y & L. 169, 184

⁸¹ See generally *id.*

⁸² See Ramachandran, *supra* note 7, for a discussion of the mutual reinforcement of dress and identity.

what the courts are thinking, but at least some evidence suggests that jurists' evolution in thinking actually reflects regressive attitudes about gender expression.

In all, that these cases have been able to move forward expressive conduct doctrine is productive. There are several First Amendment questions still unanswered by this line of cases, most relevantly whether the subversive character of an identity-based message is relevant to First Amendment analysis, and if so, the extent to which a message must subvert expectations of one's identity to be protective communicative speech.

Conclusion

The First Amendment prohibits the regulation of both speech and expressive conduct. Kosbie argues that the contemporary expressive conduct framework protects gender-expressive dresswear. He is right, but only because cases involving transgender litigants have shaped the courts' analysis on issues of gender-expressive dresswear.

[The remainder of the conclusion is omitted.]

Applicant Details

First Name **Conner**
Last Name **Robinson**
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Applicant Education

BA/BS From **Kansas State University**
Date of BA/BS **May 2020**
JD/LLB From **The University of Chicago Law School**
<https://www.law.uchicago.edu/>
Date of JD/LLB **June 3, 2023**
Class Rank **School does not rank**
Does the law school have a Law Review/Journal? **Yes**
Law Review/Journal **No**
Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Specialized Work Experience **Appellate, Habeas, Immigration,
Patent, Prison Litigation**

Recommenders

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Fennell, Christopher
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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

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March 28, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term. I immigrated to the United States with nothing more than a single suitcase and the memories of a childhood spent on a small farm in Zimbabwe. My voyage from refugee to U.S. citizen ignited my pursuit to become an effective advocate for those who face the same challenges I once did. A federal clerkship is an unparalleled opportunity to meaningfully grow the skills and experiences that will help propel me toward becoming a successful advocate. I believe my background will lend an important perspective to your chambers while also bringing along the ability to collaborate and continuously learn.

I have focused my work and academic experiences on opportunities that allow me to progress in my writing. As a student in UChicago's Constitutions Lab, I researched and wrote scholarship on the constitutional design of federal judiciaries that was delivered to actors to rely on during post-coup constitution building. Moreover, my article concerning Title III of the Americans with Disabilities Act is forthcoming in the *University of Illinois Law Review*. Additionally, I strengthened my research and writing skills in UChicago's Global Human Rights Clinic. There, I worked under Special Rapporteur Clément Voule. My work included writing and sending an amicus brief to the Zimbabwean Parliament asserting the United Nations' objections to a proposed bill limiting the fundamental rights of public volunteer organizations. Furthermore, I developed and delivered a training on how to record human rights violations to activists in Myanmar. In addition to strengthening my research and writing skills, my clinical experience allowed me to cooperate with lawyers, activists, survivors, and many other important and often unheard voices worldwide. Lastly, I will be a litigation associate for a firm in New York City for the time between graduating and clerking.

A resume, transcript, and writing sample are enclosed. Letters of recommendation from Professors Fennel, Ides, and Olaizola Rosenblat will arrive separately. Should you require additional information, please do not hesitate to let me know.

Respectfully,

Conner Robinson

CONNER ROBINSON

21624 W. 177th Terrace, Olathe, KS 66061 § (913) 787-6414 § connerr@uchicago.edu

EDUCATION

THE UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL

Juris Doctor, Expected May 2023

- Activities & Pro Bono: American Constitution Society, First Generation Professionals, Immigration Law Society, International Law Society, National Lawyers Guild, Prison Letter Writing Program, Student Interview Committee, Pro Bono Pledge Student, *Pro Bono Honors*
- *Constitutions Lab*: Researched and wrote scholarship related to constitutional design; produced post-coup constitution building scholarship that provided analysis of existing constitutional performance for constitutional drafters and national publics
- **Article**: *Red Blood Sells*, U. Ill. L. Rev. Online __ (forthcoming 2023)

LMU LOYOLA LAW SCHOOL, Los Angeles, CA

First-year coursework completed toward Juris Doctor, 2020-2021

- Activities: Admissions Office Student Ambassador; Loyola Genocide Justice Clinic, *Clinical Student* (Invitation Extended); Public Interest Law Foundation (1L Representative)

KANSAS STATE UNIVERSITY, Manhattan, KS

Bachelor of Arts in Political Science; Spanish, May 2020

- Honors: Dean's Honor List Student; Putnam Scholarship; Theta Xi Academic Scholarship; June Hill Sherrid Scholarship
- Activities & Volunteering: Big Brothers and Big Sisters (*On-Campus Representative*); Habitat for Humanity; Association of Residence Halls, *Governing Board Member*; International Coordinating Council; Pre-Law Program; Spanish Club
- Thesis: *Ethnic Conflict in Comparative Prospective: Zimbabwe and Uganda*

EXPERIENCE

MOBILIZATION FOR JUSTICE, New York City, NY

Student Attorney, Summer 2022

- Worked alongside attorneys to provide free legal advocacy in the areas of housing; foreclosure; civil, disability and aging rights; bankruptcy, tax, consumer, employment, government benefits, immigration, and kinship care

WILLKIE, FARR & GALLAGHER, New York City, NY

Summer Associate, Summer 2022

GLOBAL HUMAN RIGHTS CLINIC, UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL

Clinical Student, Aug. 2021 – Present

- Use international human rights laws and norms as well as other substantive law and strategies to draw attention to human rights violations, develop practical solutions, and promote accountability on the part of state and non-state actors
- Working alongside international organizations and foreign governments to advance human rights through adjudication in domestic and international fora and other forms of advocacy including fact-finding and documentation, research, legislation, and policy development
- Wrote amicus briefs, intervention letters, and developed and conducted human rights trainings for foreign NGOs

UNITED STATES ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF CALIFORNIA, San Diego, CA

Law Clerk, Affirmative Civil Litigation, May 2021 – Aug. 2021

- Supported Assistant U.S. Attorneys in a number of litigation areas, including health care fraud, & defense procurement fraud, as well as enforcing the Civil Rights Act and the Americans with Disabilities Act
- Researched and wrote legal memoranda on claims under the Federal Tort Claims Act, habeas corpus claims, 8th Amendment jurisprudence, and CDC guidelines jurisprudence
- Analyzed 8th Amendment case law to advise Assistant U.S. Attorneys on the effect of vaccination on claims of unconstitutional confinement
- Recommended and refined deposition strategies for Assistant U.S. Attorneys
- Wrote responses and motions; prepared documents for early neutral evaluations and case management conferences

CITIZENSHIPS & INTERESTS

U.S., Canadian, and Zimbabwean citizenships

Basketball, cooking, hiking, hip-hop & jazz music, non-fiction reading, and soccer



Name: Conner J Robinson
Student ID: 12338456

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

Kansas State University
Manhattan, Kansas
Bachelor of Arts 2020

CREDIT AWARDED FOR ACADEMIC WORK DONE AT LOYOLA LAW SCHOOL- LOYOLA MARYMOUNT U,
2020-2021 39

Spring 2022

Course	Description	Attempted	Earned	Grade
LAWS 40501	Constitutional Law V: Freedom of Religion Mary Anne Case	3	3	181
LAWS 43244	Patent Law Jonathan Masur	3	3	176
LAWS 90225	Global Human Rights Clinic Claudia Flores Mariana Olaizola Rosenblat	3	3	178

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 41101	Federal Courts Curtis Bradley	3	3	175
LAWS 43200	Immigration Law Amber Hallett	3	3	177
LAWS 43224	Admiralty Law Randall Schmidt	3	3	178
LAWS 53299	Class Action Controversies Michael Brody	2	0	

Beginning of Law School Record

End of University of Chicago Law School

Autumn 2021

Course	Description	Attempted	Earned	Grade
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Geoffrey Stone	3	3	175
LAWS 53218	Law and Public Policy: Case Studies in Problem Solving Stephen Patton	2	2	177
LAWS 53431	Constitutions Lab: Myanmar Thomas Ginsburg Jason Gelbort	3	3	177
LAWS 90225	Global Human Rights Clinic Mariana Olaizola Rosenblat	3	3	178

Winter 2022

Course	Description	Attempted	Earned	Grade
LAWS 40201	Constitutional Law II: Freedom of Speech Geoffrey Stone	3	3	179
LAWS 45001	Family Law Mary Anne Case	3	0	
LAWS 53306	Anthropology and Law Meets Substantial Research Paper Requirement Designation: Christopher Fennell	3	3	182
LAWS 90225	Global Human Rights Clinic Mariana Olaizola Rosenblat	2	2	178

INSTITUTION CREDIT										-Top-	
Term: Law Fall 2020											
College:			Law								
Major:			Law								
Student Type:			Law First Time JD								
Academic Standing:											
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R			
LAWB	1001	JD	Contracts	A	5.000	20.00					
LAWD	1001	JD	Criminal Law	B+	4.000	13.33					
LAWJ	1001	JD	Civil Procedure	YL	3.000	0.00					
LAWJ	1002	JD	Legal Research and Writing	YL	2.000	0.00					
LAWL	1001	JD	Property	YL	2.000	0.00					
Term Totals (Juris Doctor)											
Attempt Hours				16.000		Earned Hours		9.000		Quality Points	
Current Term:				16.000		9.000		33.33		3.70	
Cumulative:				16.000		9.000		33.33		3.70	
Unofficial Transcript											
Term: Law Spring 2021											
College:			Law								
Major:			Law								
Student Type:			Continuing								
Academic Standing:											
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R			
LAWG	1010	JD	Introduction to International Law	B	3.000	9.00					
LAWJ	1001	JD	Civil Procedure	A	2.000	8.00					
LAWJ	1002	JD	Legal Research and Writing	A-	2.000	7.33					
LAWK	1001	JD	Torts	A-	5.000	18.33					
LAWL	1001	JD	Property	B+	3.000	9.99					
Term Totals (Juris Doctor)											
Attempt Hours				0.000		Earned Hours		0.000		Quality Points	
Current Term:				0.000		9.000		33.33		0.00	
Cumulative:				16.000		9.000		33.33		3.70	
Unofficial Transcript											

March 29, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Conner Robinson of the University of Chicago Law School class of 2023 for a clerkship in your chambers. I taught and supervised Conner during the 2021-2022 academic year while I was Lecturer-in-Law and Global Human Rights Clinic (GHRC) fellow. As a young lawyer of nontraditional background, I believe Conner would make a valuable and unique contribution as a clerk and, ultimately, as a member of the bar.

At the clinic, Conner was part of a team assisting the United Nations Special Rapporteur on Freedom of Assembly and Association to identify global patterns of government persecution of climate change activists. On this team, Conner was one of the lead drafters of an intervention by the Special Rapporteur expressing concern to the Zimbabwean government about draft legislation aimed at restricting the activities of civil society organizations. Along with his collaborators, Conner also produced a mapping and legal analysis of cases pending in courts around the world to inform the Special Rapporteur about opportunities for filing amicus curiae. In the middle of the schoolyear, along with his teammates, Conner additionally conducted a human rights training for activists in Myanmar. Despite language barriers and background differences, Conner made sure the training was accessible and helpful to the activists, explaining complex concepts with patience and clarity.

During the year that I taught and got to know Conner, he grew substantially as a legal thinker and writer. Conner transferred to the University of Chicago Law School from LMU Loyola Law School after his first year of law school, a transition he managed gracefully and maturely. From his first day in the clinic, Conner exuded levelheadedness, kindness towards his peers, and an eagerness to learn. While his writing skills at the beginning of the term were somewhat behind that of his peers, he worked diligently and showed significant improvement by the end of the year. Conner was receptive and responsive to feedback, demonstrating a quiet but noticeable determination to meet the high expectations his instructors set for him. I am confident that Conner would make the most of this clerkship opportunity.

Conner's life experiences and nontraditional background have shaped his passion for community-centered and public-interest law. Conner grew up on a farm in Zimbabwe and later fled to Canada in the wake of growing unrest. He spent the rest of his youth moving between Saskatchewan, Chicago, and Wisconsin, living with relatives before relocating to Kansas, where he finished high school. Conner was the first person in his family to attend higher education. He has a deep appreciation for the challenges faced by marginalized communities and is committed to pursuing a career representing the underrepresented.

Conner was a pleasure to have in the clinic and has displayed maturity and commitment to the practice of law. If you would like to discuss Conner's abilities and accomplishments further, please feel free to contact me at (301) 915-5744.

Sincerely,

Mariana Olaizola Rosenblat
Policy Advisor on Technology and Law
NYU Stern Center for Business and Human Rights

Mariana Olaizola Rosenblat - olaizola@uchicago.edu

April 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I understand that Connor Robinson has applied for a clerkship with your chambers. I am very pleased to write a letter of reference on his behalf. Connor was a superb student and possesses all the qualities one might demand of a law clerk. He is diligent, thoughtful, and analytical; and he writes at a professional level.

I got to know Connor three years ago year when he was enrolled in my year-long Civil Procedure course. Due to the pandemic, I was required to teach the class on Zoom. That made it a tough experience for all. There were approximately 70 students in that class. By the middle of the second semester, one could sense the Zoom fatigue. But Connor never gave into it. He was a standout from the very beginning to the very end. Despite the challenges presented by Zoom, he participated actively in the daily discussions, demonstrating a professional level of preparation and an enthusiastic curiosity for the material. I was impressed with his dedication to learning and his ability to sort through complicated procedural doctrines. He is also very smart and capable of understanding and working with the most complex doctrines.

Connor has a strong work ethic, a crisp analytic mind, and an ability to write clearly. That combination paid off for him with an A in the course and a final exam that was truly superb. On top of that Connor is respectful, professional, and with the poise of someone who has both confidence and humility. He would be a wonderful addition to a judge's chambers.

Please let me know if I can be of further assistance.

Sincerely,
Allan Ides

Allan Ides - allan.ides@lls.edu - (213) 736-1464